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INTERNATIONAL LABOUR LAW NETWORK **NEWSLETTER**

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Top ILLN News

Severance pay in selected ILLN member states.

Fellow Reader,

We are pleased to present the latest edition of our newsletter. In this issue, we focus on severance pay across the ILLN member states, including most European Union countries, the United Kingdom, and Switzerland. Severance entitlements play an important role in the context of employment termination and reflect the balance each legal system strikes between flexibility for employers and protection for employees.

Although the legal basis, calculation methods, and eligibility criteria vary significantly between jurisdictions, severance pay generally aims to mitigate the financial impact of job loss and to provide employees with a degree of economic security during the transition to new employment.

In many European countries, statutory rules are complemented by collective agreements, employment contracts, or established case law, resulting in a diverse landscape of regulation and practice.

This newsletter provides a comparative overview of how severance pay is regulated and applied in selected ILLN jurisdictions. It examines, among other issues, statutory entitlements, the relevance of length of service, the interaction with notice periods, and the role of courts and negotiated settlements.

This cross-jurisdictional perspective highlights both common principles and key differences in approaches to compensation upon termination across Europe.

We hope you will enjoy reading this edition.

SEVERENCE PAY IN AUSTRIA

Navigating the Old Regime
the New Model & Everything In Between

REPUBLIC OF AUSTRIA

Under Austrian employment law, severance pay is a statutory entitlement that may arise upon termination of an employment relationship. What makes the Austrian framework distinctive is the coexistence of two fundamentally different systems: a traditional tenure-based regime applicable to older employment contracts (Abfertigung alt) and a modern, contribution-based model introduced in 2003 (Abfertigung neu).

Depending on when the employment relationship commenced and how it is terminated, the legal and financial consequences can differ substantially. For legal practice, this regularly leads to questions of demarcation, particularly in connection with mutually agreed terminations, employer dismissals, voluntary resignations and the structuring of contractual severance payments. The following provides a concise overview of the key differences between the two severance systems in Austria, and a side note on voluntary severance payments.

Historical context

The traditional severance regime developed as a tenure-based protection mechanism after World War I, designed to reward employee loyalty and provide financial cushioning in cases of employer-initiated termination. However, the system increasingly drew criticism for its rigidity, lack of portability, and the financial burden it imposed on employers at the time of termination. In the early 2000s only 15% of employees whose employment contracts ended were entitled to severance payments under the old system. Therefore, a redesign of the system was necessary.

The reform effective as of 1 January 2003 fundamentally reshaped the system by introducing a contribution-based model with mandatory employee provident funds. The legislative objective was to enhance labor market mobility, ensure portability of accrued entitlements, and shift severance from a termination-triggered liability to a continuously funded model.

The “Old” Severance System – Entitlement Structure & Risk Exposure

The old severance regime applies to employment relationships commenced before 1 January 2003, provided no valid transfer to the new system has taken place.

Key prerequisites:

- Minimum duration of employment: three years
- Entitlement depends largely on the mode of termination

AUSTRIA

DR WOLFGANG KINNER
Kinner Korenjak Law

kinner@kinner-korenjak.law

Entitlement-triggering terminations include:

- Employer termination
- Unjustified dismissal
- Justified immediate resignation by the employee
- Mutual termination agreement
- Expiry of a fixed-term contract
- Certain special statutory cases (e.g., retirement, maternity-related resignation)

No entitlement typically arises in cases of:

- Employee resignation (subject to limited exceptions, e.g., retirement)
- Justified dismissal for employee misconduct

Amount of severance:
The statutory amount is graduated based on years of service, ranging from two to twelve monthly remunerations.

Practical considerations:

- The calculation basis is the remuneration due for the last month of employment, including regularly recurring variable components.
- Bonuses, commissions, and other performance-based elements require careful assessment.
- In long-standing employment relationships, the old severance system represents a significant financial exposure, especially in employer-initiated terminations.

The "New" Severance System

For employment relationships established on or after 1 January 2003, the new contribution-based regime applies. Under this system, the employer pays 1.53% of the employee's gross monthly remuneration into a mandatory employee provident fund. The entitlement is thus financed on an ongoing basis and is largely independent of the specific mode of termination.

After three years of contributions, the employee acquires a vested entitlement that is portable across employers. Upon termination, the employee may opt for a lump-sum payout, continued investment of the capital, or transfer within the statutory framework. Because the employer's obligation is limited to ongoing contributions, the new system eliminates the termination-triggered liquidity risk that characterized the old regime. In practice, this model shifts the legal focus away from the termination event itself toward issues of correct contribution assessment and compliance during the employment relationship. While the overall benefit may be lower than under the old regime in cases of very long service, the system provides predictability and portability.

Transfer from the Old to the New Regime

Employees subject to the old system may, by agreement, transfer into the new regime. Such transfers require careful drafting and transparent calculation. Depending on the chosen model, accrued entitlements under the old system may be preserved ("freezing" model) or converted and transferred into the contribution-based framework.

Contractual and Voluntary Severance Arrangements

In addition to statutory severance, Austrian practice frequently involves contractual or voluntary severance payments, particularly in executive employment relationships.

These arrangements must be clearly distinguished from statutory entitlements.

Contractual severance clauses create independent contractual claims and may provide for defined multiples of remuneration or extend entitlement beyond statutory requirements.

Their interaction with statutory severance should be expressly regulated, especially with regard to cumulative entitlement or set-off. Voluntary severance payments, by contrast, are typically agreed in the context of termination negotiations or restructuring measures. They are not based on statutory entitlement but solely on agreement between the parties. Clear drafting is essential to avoid ambiguity regarding their relationship to any existing statutory claims.

Conclusion

Austrian severance law is characterized by the coexistence of two structurally different statutory systems rooted in distinct policy approaches: a tenure-based protection model and a portable contribution-based regime. Determining which system applies is the first step in any termination analysis. Equally important is the careful distinction between statutory severance and contractual or voluntary arrangements, each of which follows its own legal logic. Only a structured assessment of these layers allows for an accurate evaluation of termination costs and a legally sound approach to exit structuring in Austria.

DR WOLFGANG KINNER
KINNER KORENJAK LAW
kinner@kinner-korenjak.law

SEVERENCE PAY IN BELGIUM

KINGDOM OF BELGIUM

Under Belgian law, an employment contract can be terminated in different ways. The financial consequences of such termination depend on the type of contract and the manner in which it is ended.

This contribution focuses on the determination of notice periods and severance pay (indemnity in lieu of notice), and briefly addresses additional compensation that may be claimed in specific circumstances.

For the sake of clarity, these rules do not apply in case of dismissal for serious cause or termination in mutual agreement.

Contracts for indefinite duration

An employment contract for indefinite duration can be terminated:

- by serving a notice period; or
- with immediate effect, by payment of an indemnity in lieu of notice.

Termination with notice

When notice is served, the employee remains employed during the notice period and continues to be entitled to his salary and all contractual and statutory benefits.

Contracts started before 1 January 2014

For employment contracts that commenced before 1 January 2014, the notice period is determined in two steps:

Step 1 – Seniority acquired until 31 December 2013

The notice period depends on the employee's status (blue- or white-collar) and the annual gross salary as at 31 December 2013.

For white-collar workers:

· Annual gross salary ≤ EUR 32,254: 3 months per period of 5 years of seniority started.

· Annual gross salary > EUR 32,254: 1 month per year of seniority started, with a minimum of 3 months.

For blue-collar workers, the applicable notice periods were determined at the level of the joint committee and expressed in days.

BELGIUM

EMMANUEL WAUTERS
Clarity Legal
emmanuel.wauters@claritylegal.be

Step 2 – Seniority acquired as from 1 January 2014

For seniority acquired as from 1 January 2014, the notice period is determined according to a statutory grid expressed in weeks. The notice increases progressively with seniority, starting at 1 week (less than 3 months of service) and reaching 62 weeks after 20 years of service, plus 1 additional week per year of seniority as from 30 years.

The total notice to be observed by the employer equals the sum of step 1 and step 2.

Example
A white-collar worker started on 1 January 2010 and is dismissed on 2 March 2026. His salary on 31 December 2013 exceeded EUR 32,254 gross.
The notice period will consist of:
- 4 months (step 1), and
- 39 weeks (step 2).

Contracts started as from 1 January 2014

For contracts that commenced as from 1 January 2014 (which are now the most common), the notice period is determined exclusively on the basis of the statutory grid mentioned above and is expressed in weeks.

Example
A white-collar worker started on 1 January 2020 and is dismissed on 2 March 2026.
The applicable notice period amounts to 21 weeks.

Formalities and practical aspects

Notice must be given either by registered letter (effective on the third working day following dispatch) or by bailiff. The dismissal letter must mention both the start date and the duration of the notice period.
The notice period begins on the Monday following the week in which notice was notified.

If the employee resigns, shorter notice periods apply, also depending in his seniority, with a maximum of 13 weeks.

Termination with immediate effect – indemnity in lieu of notice

Instead of serving notice, the employer may terminate the contract with immediate effect by paying an indemnity in lieu of notice.

This indemnity corresponds to the remuneration (salary and benefits) the employee would have received during the applicable notice period.

Example
A white-collar worker started on 1 January 2020 and is dismissed with immediate effect on 2 March 2026.

The indemnity in lieu of notice will correspond to 21 weeks of remuneration. The contract ends immediately.

The remuneration taken into account includes not only the fixed salary, but also:
- double holiday pay,
- thirteenth month,
- variable remuneration and related holiday pay,
- benefits in kind (e.g. company car, insurance coverage, eco vouchers, etc.).

Employer's social security contributions are due on the indemnity (approximately 27%).
The indemnity is payable at the end of the employment agreement, subject to specific rules applicable to companies officially recognised as being in difficulties.

Contracts for definite duration

A fixed-term contract may, in principle, be terminated prematurely.

The law distinguishes between:

- The first half of the contract (limited to a maximum of 6 months):

During this period, either party may terminate the contract without specific cause, subject to compliance with a notice period calculated as if the contract were of indefinite duration.

- The second half of the contract:

As from the second half (and at the latest after 6 months), early termination without serious cause is no longer possible by serving notice. The terminating party must pay an indemnity equal to the remuneration due until the agreed end date, capped at twice the indemnity in lieu of notice that would have been payable under an indefinite-term contract.

Additional compensation: manifestly unreasonable dismissal and protective compensation

In addition to the notice period or indemnity in lieu of notice, a dismissed employee may, in certain circumstances, claim additional compensation.

Manifestly unreasonable dismissal

For employees falling within the scope of the relevant legislation, a dismissal may be considered "manifestly unreasonable" where it is not based on reasons related to:

- the employee's conduct or suitability, or
- the operational needs of the undertaking,

and where no normal and reasonable employer would have decided to dismiss under the same circumstances.

If the labour courts consider the dismissal to be manifestly unreasonable, they may award compensation ranging between 3 and 17 weeks of remuneration, on top of the notice period or indemnity in lieu of notice.

Protective compensation

Certain categories of employees benefit from special protection against dismissal (e.g. employee representatives, employees on maternity leave, employees having lodged specific complaints).
If such an employee is dismissed in violation of the applicable protection rules, the employer may be required to pay a specific protective indemnity, often corresponding to a fixed amount of remuneration (for example 3, 6 months or more), in addition to the ordinary severance pay.

Conclusion

The determination of severance pay in Belgium depends primarily on the employee's seniority, the start date of the contract and the manner in which the contract is terminated.

In addition to the statutory notice period or indemnity in lieu of notice, employers must carefully assess whether additional compensation may be due, in particular in cases of manifestly unreasonable dismissal or where special dismissal protection applies.

Given the technical nature of the rules and the potentially significant financial impact, a prior legal assessment is strongly recommended before proceeding with termination.

EMMANUEL WAUTERS
Clarity Legal

emmanuel.wauters@claritylegal.be

SEVERENCE PAY IN GERMANY

FEDERAL REPUBLIC OF GERMANY

No legal entitlement

In Germany, severance payments play a well-established and widely accepted role in the context of employment separations, whether negotiated out of court or in judicial proceedings. Despite their practical importance, there is no general statutory entitlement or calculation formula to severance pay in cases of unilateral termination or a mutual agreed ending of the employment relationship. Such an entitlement arises only in rare and exceptional circumstances (see below). As a rule, severance payments are therefore the result of a negotiated settlement between the parties taking into account the mutual interests and litigation risks of the parties to the employment relationship.

Regulation in termination agreement or court settlement

Such agreements can be made as an extrajudicial termination agreement or during ongoing legal proceedings in court. Payment of severance is often part of an out-of-court termination agreement in a separation processes, despite having no legal obligation to do so. If dismissal protection proceedings or other legal proceedings are already pending, the parties can reach a court settlement if mutually agreeing on such. Part of this is usually a severance pay. Such settlements are usually agreed upon directly during court hearings or even before.

Severance pay amount

The amount of the severance pay is freely negotiable. In the event of a settlement agreement, whether judicial or extrajudicial, there are no fixed legal requirements regarding the amount. However, it has become standard practice to use the gross monthly salary in relation to the number of years of employment as the basis for calculation and to multiply this by a certain factor. Depending on the point of view, in addition to the fixed salary other factors are taken into account when determining the gross monthly salary, such as a pro rata variable remuneration, a thirteenth month's salary or the financial benefit of private use of the company car. In general the factor is the decisive point of negotiation (Example: Gross monthly salary x factor x length of service).

GERMANY

LUCA BOROWSKI, LL. M.
KÜTTNER Rechtsanwälte
borowski@kuettner-rechtsanwaelte.de

The specific amount depends on negotiation and is mostly based on several factors. It usually reflects the respective litigation risks of the parties. The higher the risk of losing a dismissal protection lawsuit, the more reason there is to accept a higher or lower factor. The severance payment is subject to statutory income tax.

Severance Pay in the Event of Termination for Operational Reasons

There is only one situation an employee can claim a severance pay on base of the law. In accordance with the German Dismissal Protection Act (KSchG), severance pay may be payable in the event of termination for operational reasons, provided that the employer expressly offers it (§ 1a KSchG). In the notice of termination, the employer must indicate that the employee will receive severance pay, provided that they do not file an action for unfair dismissal within the three-week period for bringing such an action. This enables the employer to offer a severance payment in exchange for the employee waiving their right to take legal action. The amount of the severance payment is equal to half a monthly salary for each year of employment. However, this rarely plays a role in practice.

Severance Payment by Court Ruling

In exceptional cases, the labour court may terminate the employment relationship by ruling and, at the same time, set a severance pay. The requirements for this are stringent, as such a ruling significantly restricts the parties' freedom of contract. If the court finds that the employment relationship has not been terminated by the dismissal, but the employee cannot reasonably be expected to continue the employment relationship, or if there are reasons that do not allow for further cooperation between the employer and the employee that would serve the purposes of the business, the court may terminate the employment relationship upon request of one of the parties in return for payment of a severance payment (§ 9 KSchG). The application for dissolution must be justified and is subject to judicial review. If the employee is a senior executive according to the legal definition, the employer's application does not need to be justified.

However, in such proceedings, it is often disputed whether the employee is to be classified as a senior executive within the meaning of Section 14 para. 2 KSchG. The amount of the severance payment is at the court's discretion but limited to maximum of a yearly gross salary. If the employee has reached the age of fifty and has been employed for at least fifteen years, an amount of up to fifteen months' salaries shall be determined; if the employee has reached the age of fifty-five and has been employed for at least twenty years, an amount of up to eighteen months' salaries shall be determined (§ 10 KSchG).

Severance Pay under a Social Plan

In the case of major restructuring measures, a social plan between employer and the works council is often necessary or even mandatory. If operational changes lead to redundancies in the head count, the social plan may include provisions for severance payments to offset the financial impact of job loss on the affected employees. While the inclusion of severance payments in a social plan is not mandatory, in practice they are regularly one of the central components of a social plan. If a social plan provides for severance payments and the individual employee meets the eligibility requirements defined therein, the employee is entitled to payment of the severance payment from the social plan. However, this does not deprive the employee of the right to bring an action for unfair dismissal before the labour court in the event of termination. In such a case, the employee's entitlement to severance pay depends on the outcome of the legal dispute. If, for example, the labour court rules that the dismissal is invalid, the employment relationship continues and no social plan severance pay is paid.

LUCA BOROWSKI, LL. M.
KÜTTNER Rechtsanwälte
borowski@kuettner-rechtsanwaelte.de

SEVERANCE AND TERMINATION INDEMNITIES IN LUXEMBOURG

DUCHY OF LUXEMBOURG

Employment termination in Luxembourg is governed by a clear legal framework that safeguards the rights of both employers and employees. This article summarizes the main rules around severance pay and other termination-related compensation.

Statutory severance

Eligibility criteria

Severance pay in Luxembourg is governed by Article L.124-7 of the Labour Code. It applies to employees who are dismissed by their employer with notice – excluding cases of immediate dismissal for serious reasons (motif grave)– provided they have completed at least five years of service.

Employees dismissed before reaching five years of service are not entitled to severance pay, unless such entitlement is provided for by an individual employment contract or a collective agreement. Additionally, employees who have applied for and received pre-retirement allowances are excluded from severance pay entitlement.

Calculation and payment of the severance

In addition to the applicable notice, an employee is entitled to a severance pay calculated as follows. The amount of the severance depends on the length of service which is calculated up to the end of the notice period.

Years of service	Amount of the severance
5 to <10 years	1 month's salary
10 to <15 years	2 month's salary
15 to <20 years	3 month's salary
20 to <25 years	6 month's salary
25 to <30 years	9 month's salary
30 years or more	12 month's salary

LUXEMBOURG

ELISE DYSLI
Elvinger Hoss Prussen

EliseDYSLI@elvingerhoss.lu

Collective bargaining agreements can stipulate additional severance pay.
The calculation is based on the average gross salary received in the 12 months before the notice of termination, including sickness benefits, regular bonuses and supplements, but excluding overtime pay, gratuities and all allowances for incidental expenses.
Severance pay may benefit from full or partial tax exemption, depending on the circumstances of the case and applicable tax provisions.
Severance pay is due when the employee actually leaves the company.

Special rules for small employers

Instead of paying severance, employers occupying fewer than 20 employees may, in the letter of dismissal, opt to extend the period of notice to apply the following notice periods, calculated subject to the employee's years of service:

Years of service	Applicable extended notice period
5 to <10 years	5 months
10 to <15 years	8 months
15 to <20 years	9 months
20 to <25 years	12 months
25 to <30 years	15 months
30 years or more	18 months

Other termination-related indemnities

The legal framework for anti-discrimination in Luxembourg combines labour and criminal law provisions to protect employees from unfair treatment, setting clear boundaries on what constitutes unlawful discrimination.

As workplaces evolve and diversity becomes increasingly valued, understanding and complying with these rules is essential.

Indemnity for untaken annual leave: Employees are entitled to compensation for any accrued but untaken annual leave at the end of employment, regardless of the reason for termination.

Payment in lieu of notice: Note that, unlike some countries, Luxembourg does not provide for payment in lieu of notice–the notice period must be observed or extended as provided by law or applicable collective bargaining agreement.
Indemnity for irregular dismissal: If an employer does not comply with the statutory termination procedures – such as omitting the mandatory preliminary meeting or failing to observe the required notice formalities (for instance, notification by registered mail or hand delivery with acknowledgment of receipt)–, the employee may be entitled to an additional indemnity. This additional indemnity is generally limited to the equivalent of one month's salary. However, it is not awarded if the labour court determines that the dismissal was abusive, in which case other remedies may apply.

Indemnity for unfair dismissal: A dismissal is regarded as unfair, and contrary to social and economic reasons if it takes place unlawfully or if it is not justified by valid grounds. If the dismissal with notice is not based on a real and serious grounds or if the termination with immediate effect is not based on severe reasons (motif grave), Labour courts may award material and moral damages to the employee in addition to statutory severance pay and notice.

Conclusion

Luxembourg's labour law aims to balance the interests of employers and employees by providing clear rules on severance pay and related indemnities. Understanding these rules helps both parties navigate terminations with confidence. Early legal advice is recommended to ensure compliance and protection of rights.

ELISE DYSLI
Elvinger Hoss Prussen

EliseDYSLI@elvingerhoss.lu

SEVERANCE PAY IN THE NETHERLANDS

THE KINGDOM OF THE NETHERLANDS

Introduction

Dutch employment law provides for a structured framework governing severance and termination-related compensation. This framework combines a statutory minimum entitlement with the possibility of additional (judicial) compensation, contractual arrangements and, in certain sectors, mandatory limitations. The sections below outline the principal forms of severance pay and the legal parameters applicable to each.

Statutory transition payment

The statutory severance entitlement in the Netherlands is the transition payment, governed by Articles 7:673 Dutch Civil Code. An employee is entitled to this payment if an indefinite employment agreement is terminated at the initiative of the employer, or if a fixed-term contract is not renewed at the employer's initiative. The transition payment is also due where the court dissolves the employment at the employer's request or where the employee resigns as a result of serious culpable behaviour by the employer. In case of serious culpable behaviour on the employer's side, the court may, upon the employee's request, award an additional compensation (billijke vergoeding). This compensation is distinct from the statutory transition payment, is not subject to a statutory cap and is determined by the court, taking into account all relevant circumstances of the case. The amount of the statutory transition payment equals one-third of the gross monthly salary per year of service, calculated pro rata for part. The "gross monthly salary" includes structural wage components such as holiday allowance and fixed bonuses.

The payment is subject to an annually indexed statutory cap (currently EUR 102,000,- gross), unless the employee's annual salary exceeds that cap, in which case the maximum equals one gross annual salary.

Contractual and negotiated severance payment

In the Netherlands, many employment contracts end by mutual consent through a settlement agreement. In such cases, parties are in principle free to determine the terms of termination, including whether or not a severance payment will be granted. Although parties frequently agree on a severance payment exceeding the statutory transition payment (especially in the event where the termination if initiated by the employer), this is not mandatory and parties can also agree on a severance pay below the statutory minimum. This often happens when the initiative of termination lies with the employee.

THE NETHERLANDS

FLOOR STAUBACH
Pallas Lawyers & Mediators

floor.staubach@pallas.nl

In negotiated exits, additional factors influence the amount of severance, such as:

- The strength of the dismissal ground,
- The risk of a court or UWV proceeding,
- Potential exposure to additional compensation in case of serious culpable behaviour by the employer.

Limitation and forfeiture periods

In collective redundancy situations (impacting at least 20 employees), employers must consult trade unions and notify the authorities. This often results in a social plan agreed with trade unions. A social plan typically regulates selection criteria, redeployment efforts, outplacement and severance payment. Frequently, it provides compensation exceeding the statutory transition payment, sometimes based on a multiplier.

Sector-specific restrictions: WNT and excessive severance

In the (semi-)public sector, the Standards for Remuneration Act (WNT) imposes strict caps on remuneration and severance for executives. Severance payments may not exceed 12 months' remuneration, with a (current) maximum of EUR 75,000 gross. Finally, Dutch tax law provides for a pseudo-final levy on excessive termination payments. If a severance payment exceeds certain thresholds relative to prior remuneration, the employer may owe an additional levy (currently 75%) on the excessive portion.

Conclusion

Dutch law combines a statutory minimum system with considerable room for contractual and collective agreements. The statutory transition payment provides a predictable baseline entitlement in employer-initiated termination scenarios. In practice, however, negotiated settlements and social plans often result in higher compensation. At the same time, sector-specific regimes such as the WNT, impose substantive limitations on severance arrangements, especially for senior executives.

FLOOR STAUBACH
Pallas Lawyers & Mediators

floor.staubach@pallas.nl

SEVERANCE PAY IN THE LIGHT OF POLISH LAW

REPUBLIC OF POLAND

Severance pay constitutes a mandatory financial benefit paid by an employer to an employee upon the termination of the employment relationship, provided that such termination occurs for reasons not attributable to the employee. In Poland, severance pay is governed by the Act of 13 March 2003 on special rules for terminating employment relationships for reasons not attributable to employees (Act on collective redundancies).

However, not every employee dismissed for reasons unrelated to their conduct is eligible for severance pay. The aforementioned Act applies only to employers who employ at least 20 employees. Consequently, an employer with fewer than 20 employees is not subject to this Act, and in the event of a dismissal for reasons not attributable to the employee, the employee is not entitled to severance pay.

The sole decisive factor is whether the termination of the employment relationship occurred for reasons other than those attributable to the employee. Therefore, the right to severance pay arises only in the event of termination for a reason (or reasons) not attributable to the employee, and not necessarily for reasons attributable to the employer (see Polish Supreme Court order of August 11, 2021, III PSK 124/21, Legalis).

In this regard, it is irrelevant whether:

- the termination occurs under the collective redundancy procedure, or individual dismissal,
- the termination occurs by notice of termination issued by the employer or by mutual agreement of the parties at the employer's initiative,
- the terminated employment contract was concluded for a fixed term or for an indefinite period.

Amount of severance pay

The method for calculating the severance amount is regulated in detail in Article 8(1) of the Act on collective redundancies. Its amount depends on the period of employment with a given employer (seniority) and is equivalent to:

1. one month's salary, if the employee has been employed by the given employer for less than 2 years;
2. two months' salary, if the employee has been employed by the given employer for 2 to 8 years;
3. three months' salary, if the employee has been employed by the given employer for over 8 years.

POLAND

ELŻBIETA SMIRNOW
Wojewódka i Wspólnicy

elzbieta.smirnow@wojewodka.pl

Employment period

As a rule, "employment with a given employer" shall be understood as the company seniority i.e., the period of the employment relationship exclusively with the employer liable for the severance pay. This period includes the term of service with a legal predecessor (previous employer) if the change of employer occurred under the principles set forth in Article 23[1] of the Labour Code, i.e., upon the transfer of an undertaking or part thereof.

Statutory limit

Pursuant to Article 8(4) of the Act on collective redundancies, the amount of severance pay may not exceed 15 times the minimum wage applicable on the date of termination, as determined under separate regulations. There are no legal obstacles to an employer waiving this cap. That is, the employer may choose not to apply Article 8(4) of the Act if the calculated multiple of the employee's salary exceeds the statutory limit.

Such a practice is more favourable to the employee and is thus permissible under labour law. This principle is supported by case law (e.g., Polish Supreme Court judgment of 24 July 2009, I PK 41/09, Legalis), which states: "Article 8 of the Act limits the amount of statutory severance pay; however, it does not prevent the introduction of higher severance amounts through collective agreements or individual employment contracts." Nevertheless, in making such a decision, the employer must observe the principle of equal treatment in employment, including in respect of remuneration.

Consequently, the employer should not differentiate between employees for example, by applying statutory limits to some but not others, unless it can demonstrate that such a distinction is based on objective reasons.

Contributions & taxation

Severance pay, although constituting income from the employment relationship, is excluded from the assessment base for pension and disability insurance contributions. The assessment base for contributions does not include severance pay, damages, or compensation paid to employees due to the expiry or termination of employment. Consequently, severance pay is not subject to social security contributions (ZUS). However, severance pay is subject to personal income tax (PIT), as it does not qualify for tax exemption.

Payment deadline

The Act does not explicitly specify the deadline for the payment of severance pay. This raises the question of whether the employer may pay the severance along with the final month's salary, according to the deadline set in the work regulations or collective agreement (e.g., by the 10th day of the following month per Article 85(2) of the Labour Code).

However, Polish Supreme Court case law adopts a more restrictive approach, holding that severance pay should be paid no later than on the final day of employment. Therefore, the period for calculating interest for late payment begins on the day following the termination of the employment relationship.

The statute of limitations for a severance pay claim also begins on that day. In accordance with the general rule for employment-related claims, the limitation period is 3 years. The Act provides for no exceptions in this regard.

ELŻBIETA SMIRNOW
Wojewódka i Wspólnicy
elzbieta.smirnow@wojewodka.pl

SEVERANCE PAY FROM THE SPANISH PERSPECTIVE

KINGDOM OF SPAIN

Under Spanish employment law, the following two kinds of dismissals can be implemented:

Disciplinary dismissal
(Article 54 of the Workers' Statute):
it refers to the termination of the employment contract by unilateral decision of the employer based on serious and culpable breach by the employee of his/her obligations.

Objective dismissal
(Article 52 of the Workers' Statute):
it refers to the termination of the employment contract due to economic, technical, organizational, or production-related grounds of the employer that obliges it to make redundant a certain job position. It may also refer to the termination of an employee due to his/her inability or failure to adapt to technical modifications introduced in the workplace or due to the impossibility of the employer to adjust the job position or to assign the employee to other job positions considering new medical requirements of the employee.

Both types of dismissal may be declared fair, unfair or null and void. The consequences of the dismissal may vary depending on the declaration of the dismissal.

Regarding the disciplinary dismissal:
Fair: it means that the breach of the employee's obligations are considered serious enough to justify the dismissal and these grounds have been proven. In such case, there is no compensation or severance to be paid to the employee.

Unfair: when the reasons for the dismissal are considered not duly proven or not serious enough. In such case, the compensation is the same as the one described for the unfair dismissal in case of disciplinary dismissal.

Null and void: in the event that the termination entails a breach of a fundamental right or in the event that the employee is under a protected scenario as stated in the disciplinary dismissal. In such case, the Company is obliged to reinstate the employee and pay the salaries accrued from the termination until the reinstatement. An additional severance for damages may be imposed on the employer.

It should also be noted that the European Committee of Social Rights has ruled that the Spanish system of compensation for unfair dismissal does not comply with Article 24 of the European Social Agreement, stating that such compensation may not be adequate to compensate the loss of the employee's job and may not be dissuasive for the employer. As a result, there is currently a discussion about the possibility to claim additional damages by the employees and even amending the law in order to adjust the severance compensation legally established.

SPAIN

ELISABET PUJOL-XICOY
Miralles

epxicoy@miralles-abogados.com

SEVERANCE PAY FROM THE SWEDISH PERSPECTIVE

KINGDOM OF SWEDEN

Grounds for termination

In Sweden, an employer must demonstrate "just reason" (sakliga skäl) to lawfully terminate an employee's contract. The grounds for termination may be either (i) personal reasons – which encompass poor performance, misconduct or similar issues relating to the individual employee – or (ii) redundancy, where the reasons are not connected to the employee personally but are instead related to organisational or business factors.

Termination for personal reasons

The process of terminating employment due to personal reasons is typically challenging. Employers are generally obliged to implement supportive or corrective measures, such as providing clear warnings and opportunities for improvement, before termination on these grounds may be at hand. This ensures fairness and gives employees the chance to address any shortcomings or misconduct.

Termination Due to Redundancy

Redundancy covers all circumstances in which the termination is not attributable to the employee, including economic, technical, organisational, or other business-related reasons. Employers must adhere to specific employment protection rules (e.g. the last in first out rule) when deciding which employee is to be laid off, in order to ensure the termination is lawful.

Relocation and Consultation Obligations

Prior to any termination – whether for personal reasons or redundancy – the employer is required to investigate whether alternative positions or relocation opportunities exist within the organisation. Only if such options are unavailable or unsuitable, termination may be justified. Additionally, union negotiations or consultations are generally mandatory before executing any termination.

This process helps safeguard employee interests and ensures compliance with relevant labour laws.

Notice Periods

The statutory minimum notice periods in Sweden range from one to six months, depending on the employee's length of service. These notice periods may be extended by individual employment contracts or collective bargaining agreements. During the notice period, employees retain their entitlement to salary and all other benefits, even if they are placed on garden leave. The employer may place the employee on garden leave. It is important to note that payment in lieu of notice is not permitted under Swedish law.

Severance Pay

There is no statutory requirement for severance pay in Sweden. Nevertheless, individual employment contracts may include provisions for such pay, although this practice is uncommon except among senior management in larger organisations. When severance pay is agreed, it typically ranges from three to twelve months' fixed salary, with the amount varying according to factors such as company size as well as applicable industry, employee position, and employment protection. In practice, it is more common that severance pay is offered during negotiations of mutual termination agreements. These negotiated severance payments are usually lower than those pre-agreed in contracts, and the range can be even broader depending on the circumstances of the relevant case.

SWEDEN

LISA ERICSSON
Cirio

lisa.ericsson@cirio.se

SEVERANCE PAY IN SWITZERLAND

THE SWISS CONFEDERATION

Introduction

Severance pay is a common feature of employment exits in many jurisdictions. In Switzerland, however, the concept differs significantly from systems where statutory severance is triggered automatically by termination without cause or redundancy. Swiss law is generally not severance-driven, but severance-like payments may still arise in practice through contractual arrangements, social plans, litigation settlements, or specific statutory rules.

This article provides an overview of severance pay under Swiss employment law and highlights key considerations.

Is severance pay mandatory under Swiss employment law?

In principle: no. Swiss employment law does not provide for a general statutory severance entitlement upon termination of employment.

The default Swiss system is based on:

- notice periods (statutory or contractual),
- continued salary payments during notice,
- and, in some cases, an extended notice period and a corresponding salary continuation in case of sickness/accident.

The "statutory severance" under the Swiss Code of Obligations (rare in practice)

Swiss law does contain a statutory severance mechanism under Art. 339b et seq. of the Swiss Code of Obligations, but it is narrowly scoped and, in modern employment practice, increasingly uncommon.

A statutory severance may apply where an employee:

- is at least 50 years old

and

- has 20 or more years of service with the same employer.

In such cases, the employee may be entitled to a severance payment of between 2 and 8 months' salary, depending on the circumstances. However, in many cases this statutory entitlement is offset or replaced because Switzerland has a mandatory occupational pension system. If the employer has made sufficient contributions to the employee's pension plan, this typically eliminates the statutory severance claim.

Contractual severance & "golden parachutes"

Even though Swiss law does not generally require severance, contractual severance arrangements are common, especially for: senior management, executives, international assignees, or hires involving relocation or compensation guarantees.

SWITZERLAND

SIMONE WETZSTEIN
Walder Wyss

simone.wetzstein@walderwyss.com

These may appear in:
• employment contracts,
• executive compensation policies, • retention agreements,
• or termination clauses (e.g., severance triggered by a change of control).

From a Swiss law standpoint, such severance provisions are generally permissible, but HR and legal teams should assess:

(a) Enforceability and clarity
Swiss courts will interpret severance clauses according to contract interpretation principles. Ambiguity can lead to disputes, especially around triggers such as:
• termination "without cause",
• mutual separation,
• "good reason" resignation,
• or termination during probation.

(b) Corporate governance constraints *(listed companies)*
For Swiss listed companies, special restrictions may apply under the so-called "Swiss say-on-pay" framework (including restrictions on certain severance-like benefits for members of the board and executive management). This is a key area where HR must coordinate closely with legal and corporate governance stakeholders.

Severence pay in practice: a tool for risk management

While not mandatory, severance payments are frequently used as a pragmatic settlement tool to reduce legal and operational risk, particularly where the termination may be challenged. Common drivers include:

(a)Disputes about unfair dismissal
Swiss law provides for compensation (not reinstatement) if a termination is deemed abusive (e.g., retaliatory termination, discriminatory motives, termination due to lawful assertion of rights).

Compensation can be awarded up to six months' salary. In practice, severance payments are often agreed in exchange for:
• a waiver of claims,
• withdrawal of litigation threats,
• and a clean exit.

(b) Termination during protected periods
Swiss law contains mandatory blocking periods (e.g., during sickness/accident, pregnancy, military service). A termination issued during such periods is typically null and void. Where timing issues arise, parties may agree on a severance-based settlement rather than litigate.

(c) Reputational and employee relations considerations

Especially in sensitive cases (workplace conflict, compliance concerns, senior exits), severance may serve to: avoid escalation, protect confidentiality, and maintain internal stability.

Social plans and collective redundancies: severance in restructuring scenarios

In Switzerland, severance is not automatically triggered by redundancy. However, in larger restructurings, employers must be mindful of a potential social plan obligation: Where a company has at least 250 employees and intends to dismiss 30 or more employees within 30 days for operational reasons, it may be required to negotiate a social plan. Social plans often include severance-type benefits such as: lump-sum payments based on age and service, bridging payments, outplacement support, and training contributions.

Conclusion

Severance pay in Switzerland is best understood as an exception rather than the rule: it is generally not required by law, but it plays a significant role in executive arrangements, negotiated exits, and restructuring-related social plans. For HR and legal teams, the key is to approach severance as a strategic tool - one that should be carefully structured, documented, and aligned with Swiss employment law requirements, governance constraints, and tax/social security implications.

SIMONE WETZSTEIN
Walder Wyss

simone.wetzstein@walderwyss.com

SEVERANCE PAY IN THE UK

THE UNITED KINGDOM OF GREAT BRITAIN AND NOTHERN IRELAND

Introduction

In the UK, "severance pay" is a general term rather than a defined legal concept. In practice, it refers to a combination of payments that may arise when employment ends. These may include statutory or enhanced entitlements to redundancy pay and ex gratia sums offered as part of a negotiated exit. A termination package is most effective when the legal entitlements and discretionary elements are clearly identified.

Statutory Redundancy Pay and Enhancements

Employees with at least two years' continuous service who are dismissed for redundancy may be entitled to statutory redundancy pay. Statutory redundancy pay is calculated based on age, length of service (subject to a maximum of 20 years), and a week's pay (subject to the statutory limit). Length of service is calculated by reference to a "relevant date". If an employee receives payment in lieu of notice, the relevant date is treated as the date on which your employment would have ended if you had worked your full statutory notice period.

Employers can also offer enhanced redundancy terms, either contractually or on a discretionary basis. Enhanced redundancy terms are payments that go beyond the statutory redundancy pay. Enhancements can form part of a business or industry-wide collective agreement, or they may be defined in employee contracts provided at the beginning of, or during employment.

Tax Treatment of Termination Payments

The tax characterisation of severance payments is a central feature of any exit package. Employers and employees should take care, when negotiating termination payments, that they factor in tax. A clear written breakdown of the payments, usually set out in a settlement agreement, helps both parties understand the tax treatment applied.

• In broad terms: Certain types of termination payments can be paid tax free up to £30,000. This exemption applies only where the payment is not already treated as taxable earnings, such as salary, notice pay, holiday pay or bonuses.

• To determine whether the exemption applies, the nature of the payment must be assessed carefully. Employers should consider whether it counts as earnings, whether it relates to restrictive covenants or confidentiality obligations, or whether any other specific tax charge applies. Only if none of these apply, and the payment is a genuine termination payment, can the first £30,000 usually be paid free of income tax. Any amount above this threshold is taxable.

• Some payments fall outside this regime entirely. For example, payments made because of death, or injury can be exempt from tax if they meet the relevant criteria.

Settlement Agreements as the Framework for Severance Packages

Settlement agreements support a clean break by documenting agreed financial terms and ensuring that statutory claims are validly waived. Employers can offer employees an enhanced redundancy payment when requiring employees to enter into a settlement agreement, waiving their right to further claims against the employer.

THE UK

SARAH BULL
Birketts LLP

sarah-bull@birketts.co.uk

For the agreement to be binding, the employee must receive independent legal advice, and employers typically make a contribution towards the associated legal fees. This contribution is an important part of the process, as without legal advice, the agreement cannot take effect.

Common Negotiation Points

Beyond the financial terms, severance discussions often cover several practical and reputational issues such as the following: • References o Agreed wording can provide reassurance to the employee while ensuring the employer's position remains accurate and consistent.

Confidentiality

- Provisions usually cover both the terms of the agreement and the employer's business information. •

Restrictive Covenants

- Existing post-termination restrictions may be reaffirmed, clarified, or occasionally varied as part of the settlement.

Announcements

- Agreeing internal or external statements helps manage communications and ensures a professional exit.

Conclusion

Severance arrangements in the UK involve a blend of statutory rights and negotiated terms. A clear understanding of redundancy entitlements, careful handling of tax issues, and well-drafted settlement agreements all help to ensure a legally robust exit. When approached transparently and constructively, severance packages can help reduce the risk of future disputes for both parties.

SARAH BULL
Birketts LLP

sarah-bull@birketts.co.uk

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