

# Requesting approval for the dismissal of severely disabled people

If you wish to dismiss a severely disabled person or a disabled person with equivalent status, you must first obtain the approval of the competent authority.

## Competent Department

- [Amt für Versorgung und Integration Bremen - Integrationsamt -](#)

## Basic information

Severely disabled and equivalent disabled people are particularly protected against dismissal. For this reason, you must obtain the approval of the competent authority before giving notice.

Approval is required regardless of the reason for the intended dismissal (personal, operational or behavioral). The special protection against dismissal also applies regardless of the size of your company.

You need the approval of the competent authority for all types of dismissals, i.e. for

- ordinary dismissals,
- extraordinary dismissals (without notice) and
- notices of change.

In addition to the actual reason for dismissal, the competent authority will take into account in its decision, as part of the legally required balancing of mutual interests, for example

- Size and economic situation of the employer and
- fulfillment of the employment obligation

as well as:

- The nature and severity of the disability,
- age,
- personal circumstances of the severely disabled person,
- the length of service with the company and
- his or her chances of finding another job on the general labor market in the event of dismissal.

Particularly in the case of dismissals for personal and behavioral reasons, the dismissal protection proceedings will clarify what the company or the department and the company integration team did to avert the dismissal in advance and whether any preventative measures were taken.

In the case of extraordinary dismissals (without notice), the competent body checks whether the dismissal is related to the severe disability. If this is not the case, it will approve the dismissal and thus open the way to the labor court.

Dismissal without the involvement of the representative body for severely disabled employees (if present in the company) is invalid.

Dismissal without the prior consent of the competent body is also invalid. It cannot be subsequently approved by the competent body.

You only do not need approval if the severely disabled employee

- resigns themselves,
- has worked in your company for less than 6 months,
- has reached the age of 58 and is entitled to a severance payment or similar benefit,
- in the event of dismissal for weather-related reasons, if the employer has given a binding promise of re-employment,
- if the status as a severely disabled person could not be determined by the competent authorities at the time of termination, or
- the employment relationship is terminated without notice, for example by means of a termination agreement.

## **Requirements**

- Recognition as a severely disabled person: a degree of disability of at least 50 must have been determined by the pension office.
- Equality: if the degree of disability is 30 or 40, you must have been granted equality with a severely disabled person by the employment agency.
- An application must have been submitted to the pension office or the employment agency (equal status) at least 3 weeks before the application for approval of the termination.

## **What documents do I need?**

- Severely disabled pass
- Recognition notice from the pension office about the severe disability

(is requested from employees by the competent authority. The employer has no right to this document).

- Equal opportunities notice from the employment agency
- Job description
- Detailed justification of the intention to terminate

# Procedure

You must apply in writing for consent to the dismissal of a severely disabled person:

- The application can be made informally or by using an application form (available from the competent body).
- Upon receipt of the application for consent to dismissal, the competent body will examine the facts of the case. To this end, it will hear the severely disabled person and obtain the opinion of the works or staff council and the representative body for severely disabled employees.
- If necessary, the competent body also calls in specialists (e.g. the Technical Advisory Service) and obtains further opinions and expert reports. It may also interview witnesses to clarify the facts of the case.
- The competent body is obliged to work towards an amicable settlement at every stage of the proceedings. This can be done particularly well in an oral hearing with all parties involved.
- As part of an amicable settlement, the competent body can also offer services of accompanying assistance in working life from funds from the equalization levy, for example for disability-friendly workplace design or to compensate for extraordinary burdens that may be associated with the employment of the severely disabled person.
- If an amicable agreement cannot be reached, the competent body will make a decision on the application at its own discretion and after weighing up the mutual interests of both parties. Special regulations apply to terminations in connection with the cessation of operations, significant operational restrictions and insolvencies.
- The competent body will issue a notice of dismissal addressed to you as the applicant and at the same time to the employee as a party to the proceedings. In addition to the decision, the notice contains detailed reasons and a legal remedy.

## Legal bases

- [§§ 168 ff. Sozialgesetzbuch Neuntes Buch \(SGB IX\)](#)

## More information

The special protection against dismissal exists alongside the protection against dismissal under labor law and does not replace it.

The special protection against dismissal has the task of protecting severely disabled employees from disadvantages on the labor market due to their disability and, if necessary, compensating for them. This does not mean that severely disabled persons cannot be dismissed.

The legislator obliges employers to take preventive action in the event of difficulties arising (due to personal, operational or behavioral reasons) in the employment relationship of a severely disabled person, involving the employee representatives and the Integration Office (Section 167 (1) SGB IX). The securing of an employment relationship by means of

prevention has priority over termination and is an examination and decision-relevant component of the proceedings for protection against dismissal in accordance with SGB IX.

The termination of a severely disabled person by the employer without the involvement of the representative body for severely disabled persons is invalid.

### **What deadlines must be paid attention to?**

Applications for approval of extraordinary termination (without notice) must be submitted to the responsible office within 2 weeks.

No application deadlines apply to ordinary terminations.

Approval for termination for cause (without notice): You must give notice of termination immediately after obtaining approval from the competent authority. Immediately means within 3 working days. If you fail to meet this deadline, the approval of the competent authority is invalid. You can then only seek a new ordinary termination procedure.

Approval for ordinary termination: You must give notice of termination within one month of receiving the approval of the competent authority. After that, the approval for termination expires. You can then only seek a new ordinary termination procedure.

### **How long does it take to process**

Approval for extraordinary termination (without notice): Decision by the competent body within two weeks of receipt of the application. If no decision is made by the competent body within this period, approval is deemed to have been granted.

Approval for ordinary termination: The decision of the competent body should be made within one month if the competent body then has all the information it needs to make a legally sound decision. The average processing time nationwide is 7 weeks.

### **What are the costs?**

There are no costs.