

The warning

1. The necessity

- ◆ Before announcing behaviour caused warning

◆ We distinguish like this:

Offences in the performance area

- Bad performance
- Unpunctuality
- Warnings before cancellation necessary

Offences in the confidence area

- Embezzlement and unfaithful
- Forgeries like sickness certification
- Warnings before cancellation is not necessary

2) Content from the warning

- You need evidences for the facts, therefore we recommend to make some photos or you talk among witnesses about the problems
- Legal appreciations of the facts „Violation against contract „, make the following statement: „I see your behaviour as an legal offence against your current contract”
- Threat with labour legal consequences, like cancellation of contract or cut from bonuses

3) The form of the warning

In doubt, always written forms, because of the evidence and because of the stronger physiological pressure

4) Participating right from the works council

- For normal and single contract warning there is no right of codetermination from the council
- If ever the warning have terms like „caution“ or „Reproof“ or similar than it could be that according § 87 par.1 no.1 we right of codetermination

5) Rights of the employee against the warning

- Counter representation according § 83 par. 2
- Lawsuit to take the warning from the personnel file

6) Social statutory period

- Regular every two years, if until there is no new case with the same reason.

7) Warning during the time of probation

- It's actually not necessary, because of the cancellation protection, but also advisable, because the next offence after expiration of the deadline according § 1 kid's protection law can happen.

The Alteration cancellation

The alteration cancellation means, that we offer the employee and alternate job. This must be suitable and reasonable for the employer as well as for the employee too. These kinds of cancellation will mostly offered to older people in case of rationalisation measures. Example, mechanic – 50 years old, can be continue with his work as doorman or as company security

The checking of this options

Employee agrees this:

- Written offer for the change to the employee, with the indication that this is the only alternate for him to stay in the company

- Employee has 7 days time to consider

Employees answer – „Yes“

Agree under reservation

- The employees have to speak for the alteration cancellation
- The final decision is coming through the alteration security lawsuit

Employee doesn't agree this:

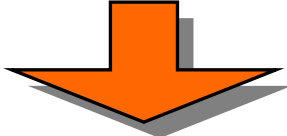
- the checking is finish, the way to the cancellation of contract is free now

Employees answer – „No“

- The checking is finish, the way to the cancellation of contract is free now

Agree without reservation

- Transfer possible, with right of codetermination for the works council according § 99



If the employer doesn't offer and suitable job, than the cancellation of the contract is inoperative, if the employee explain during the cancellation protection lawsuit, that he was able to get this job. Therefore, very important, always make this agreements with witnesses, for example the works council is perfect for this, as an person of trust.

The cancellation right

Reasons for cancellation

Company
owned

Personnel

„Necessary ones“

- Urgent necessary Company reasons, Which can affect the Job straight
- Social selection
 - to the age (40%)
 - company membership (40%)
 - **Martial** status (20%)

Caused by person

- Steady sickness
- Susceptibility
- Permanent performance

caused by behaviour

- Error behaviour
- Unpunctuality
- unexcused absence

Consider carefully of all interests is necessary. If an disadvantageous character or an offence is really so heavy, that its not reasonable for the employer to keep the working relation??

Deadline

- Normal cancellations (with deadline) according the law or the contract
- Not normal (without deadline): 14 days after announcement

Take care for the explanations deadlines from the works council

- For normal cancellation it takes – 7 days
- For cancellation w/o deadline – 3 days

Requirements for cancellations caused through company

1. Urgent company reasons

- External or internal economical or organisational reasons

2. Direct affection from this company requirements to the working place of the single employee

- The evidence must shown through schedules, job descriptions etc, otherwise its not valid

3. Economical unacceptability to go on working from the employee on his place

- Here can a company decision, in certain economical situations, to get cancellation of contract for the employees, checked from the labour court after that, if it's objective or arbitrary **but not, if it's sensible.**

4. Sensible consideration of all social aspects

Age of living	Physical conditions of the employee
Duration of the company membership	Physical conditions of his relatives
Martial status, maintenance duties etc.	Income and Physical conditions of the employee of the employees relatives
Special protection (handicaps)	
Chances on the lob market	

- For the selection, according § 95 BetrVG it's enough according to the Federal Labour court, if the criterions on the left side are fulfilled
- It should be valid for each single case. We recommend renouncing the criterions on the right part
- For pre-selection and the valence of the different criterions it's allowed to have point table, but just for first selections!! The details of each case must be checked too.

5. Performance and other company aspects

- This one can regard only, if we cannot select according to the social choice
- For the social choice we can use only employees from the same company, which are comparable and exchangeable.