



Information leaflet for companies

Company closures and collective redundancies

Do you plan to deliver 10 or more notices within 30 days, due to operational reasons or due to cessation of business activities?

In this leaflet we have summarised how you should proceed in this situation and what is important for you to note. Please note that this procedure should strictly be adhered to. The earlier you get in touch with us, the better. We will gladly advise you and can also support you with appropriate measures.

According to employment law (art. 335d ff. CO) collective redundancy occurs within companies with the following sizes:

- 20 to 99 employees: redundancy for at least ten employees
- 100 to 299 employees: redundancy for at least 10 percent of all employees.
- 300 employees or above: redundancy for at least 30 employees

Employers have the following obligations:

1. Information and consultation of the workforce

If you have planned collective redundancies it is compulsory for you to inform either the employees' representatives or – should none exist – to directly inform the employees in writing. This must include:

- Reasons for collective redundancy
- Number of employees facing redundancy
- Number of employees generally employed
- Period of time during which notices will be handed out

A copy of the announcement to the employees must be sent to the Office of Economy and Labour of the Canton of Basel-Stadt (AWA).

Subsequently the employees, or their representatives, must be able to present proposals how those redundancies can either be avoided or how the number of these redundancies can be limited, plus how the consequences can be mitigated. An appropriate period must be set for this consultation process. For small enterprises this should be at least five days, for medium to large enterprises between four to six weeks. Under no circumstances should this period be too short. In any event, the consultation of employees or representatives must take place before a definitive decision about collective redundancies, any proposals by employees or representatives must be carefully considered.

Attention:

Should an employer hand out notices within the framework of a collective redundancy, without prior consultation of employees or their representatives, then any employee concerned is entitled claim constructive dismissal. A court can award compensation of up to two month's salaries.

2. Duty to notify

Should a collective redundancy be unavoidable, then the employer is duty-bound to notify the AWA in writing.

The notification must contain:

- The reasons for the collective redundancy and the result(s) of the consultation
- Qualification, sex, nationality and domicile (CH, Fra, Ger) of affected employees.
- Date when notices handed out come into effect.
- Total number of redundancies, total number of early retirements and other measures.

Does a severance scheme exist for affected employees? (If yes, please include it).

A copy of the notification for AWA Basel-Stadt must be sent to the employees or their representatives.

3. Termination of employment contract

At the earliest, notices should be handed out when AWA Basel-Stadt is notified.

Attention:

At the earliest, employment contracts end 30 days after the notification to the AWA Basel-Stadt. Longer notice periods due to contractual agreements or legal requirements must be considered and complied with as a matter of course.

4. Duty to establish a social plan, as of 1 January 2014 (art. 335h ff. CO)

Additionally, enterprises with usually at least 250 employees are duty bound to establish a social plan, as long as they plan to hand out notices to at least 30 employees within 30 days. In these circumstances it is important that the social plan does not jeopardise the enterprise's continued existence.

The social plan will be negotiated with the employees and their employees' association or representative, or with the affected employee directly (should neither a collective employment contract nor an employees' representative exist).

Within this social plan measures can be agreed about how to avoid notices, how to limit their numbers and how to mitigate their effects. For example, measures like

- consulting, paid training, job placement
- extension of notice period, or shortening on employees' notice periods
- compensation, early retirement, contributions in cases of hardship

can be agreed upon. If no agreement is possible, arbitration is necessary.

5. How we can support you

With the aim to avoid unemployment or to keep it as short as possible, we offer services to enterprises and affected employees:

- We are holding information events in your enterprise about processes and services during unemployment.
- We actively support affected employees, to facilitate a quick reintegration into the labour market.

Additional information is available under www.awa.bs.ch
(<https://www.awa.bs.ch/arbeitsgebende-unternehmen/arbeitsrecht/massenentlassungen.html>)

Please contact:

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Check list for employers

1. If you as **employer** intend to **deliver a large number of termination notices**, then you must check in advance whether **regulations about collective redundancies apply** (art. 335d ff. CO), particularly with regard to:
 - company size (organisationally independent unit),
 - number of workforce employed in the company
 - number of termination notices planned within 30 days
 - reason for termination notice (under no circumstances may this be related to the employee; it must be a termination notice based on economic reasons).
2. Has the **consultation process** been carried out?
 - 2.1. Have you **informed** your employees or their representatives **about the planned redundancies in writing**, and allowed your employees **sufficient time to present their own proposals** (art. 335f CO)?
 - 2.2. Have you forwarded a **copy of your announcement** to AWA Basel-Stadt (art 335f para 3 CO)?
 - 2.3. Have you carefully examined the proposals by your employees or their representatives prior to your decision to make these employees redundant (art. 335f para 1 CO)?
3. Have you **notified AWA Basel-Stadt** (art 335g CO) about the collective redundancies, including notification about consultation outcome and all relevant information before issuing the redundancies?
 - 3.1 Have the employees or their representatives received a **copy of the notification to AWA Basel-Stadt** (art 335g para 1 CO)
4. Have you **complied with the notice period** of at least 30 days (after notification to AWA Basel-Stadt) (art 335g para 4 CO)
5. Is there an obligation to directly negotiate a **redundancy plan** with either the employees, the employees' union or the employees' representatives?