JURK

Juridisk rådgivning for kvinner

Cessation of employment and lay-off

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FOREWORD

This brochure is published by Legal Advice for Women (JURK). JURK is a student-run legal aid initiative that provides free legal advice to anyone who defines themselves as female.

JURK reserves the right to amend the rules after the date of publication.

We are grateful for all the good input we have received from other JURK employees and associates.

Oslo, February 2020

The brochure was revised and edited in February 2020 by the Work, Benefits and Discrimination Group in JURK.

JURK (Legal Advice for Women) provides free legal advice to anyone who defines themselves as female. Check out our Internet pages at www.jurk.no for more information.

You can also call us on 22 84 29 50 or visit us at Skippergata 23, 0154 Oslo.

You can always send us your case electronically! Do this at www.jurk.no → «Send oss din sak!» (Send us your case)

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	1.1 Termination and dismissal / summary dismissal
Cessation of employment	A permanent employment relationship ends when the employee resigns, or when the person in question is dismissed by his or her employer. This means that the employment relationship is terminated and the employee must leave when the notice period is over. An employment relationship can also be terminated by the employer summarily dismissing the employee
WEA Section 15-7	Rules are in place governing the grounds that an *employer* may invoke for dismissing employees and for how the dismissal is implemented. This will be dealt with in more detail in this brochure. An employee can, however, resign her or his position at any time, and no grounds are required for this.
WEA Section 15-14	Dismissal with immediate effect, hereafter called summary dismissal, is a more serious form of termination of the employment contract. On summary dismissal, the employment contract is terminated and the employee must leave immediately. The employer can only dismiss an employee in this way if the person in question has committed a serious breach of duty or has otherwise materially breached his or her duties under the employment contract. Serious grounds are required for summary dismissal.
	1.2 Lay off
Temporary suspension of	Layoff is when the employee's work obligation and the employer's wage obligation cease temporarily, while the employment relationship continues. The employee is still

employment	employed, and has the right and duty to return to work when the layoff ends.

	1.3 Sources for the field of labour law
Employment contracts and the Working Environment Act	When a person is in an employment relationship, it is first and foremost the employment contract and the Working Environment Act of 17th June 2005 No. 62 (abbreviated WEA.) which regulates the right to dismissal and summary dismissal.
Collective agreements	Collective agreements are also important sources in the area of labour law. These are agreements between an employees' association (trade union) and an employer's' association or a single employer. This brochure is only based on the general rules in the Working Environment Act. You should therefore be aware of whether there is a collective agreement covering your employment. This can have an impact on your working conditions.

	2. FORMAL REQUIREMENTS
Conditions WEA Section 15-4	Dismissal by an *employer* must satisfy several conditions:
	• Notice of termination must be in writing. • Notice shall either be handed directly to the employee or sent as registered mail. • The notice shall include information on the employee's right to demand negotiations and to take legal action - with deadlines for both.

	• The notice shall include information on the right to remain in the job until the case has been processed in the law courts and the deadline for invoking this. • The notice shall include the name of the employer and the correct defendant involved in any dispute. • If the notice of termination is caused by the employing company's circumstances, it shall include information on pre-emptive rights in connection with new engagements. If the employee so demands, the employer shall state the grounds for the notice of termination.
WEA Section 15-14	The same formal requirements apply to summary dismissal by the employer. The consequence of breach of the formal requirements in a dismissal or summary dismissal is that the deadline for taking legal action is not effectuated.
Termination	If the employee takes legal action and claims that the dismissal fails to comply with the formal requirements within four months after the dismissal took place, the dismissal shall normally be deemed invalid. This will be the case, for example, if an employee receives a verbal dismissal from the employer.
Summary termination	Even if the employee receives a non-conforming notice of dismissal, the notice may nonetheless be valid even if the employee initiates legal action within four months after the notice was issued.
	The following is an example of a correct formal notice of termination:

Lillevik, 21st July 2020

Lillevik, 21st July 2020

Lillevik Renhold AS Postboks 7

1234 Lillevik

Name: Martine Vågenes

Address: Lillevikveien 7, 5678 Storevik

NOTICE OF TERMINATION OF EMPLOYMENT

You are hereby dismissed from your position as cleaner in Lillevik Renhold A / S, with the final day of work on 1 September 2019.
If you wish to claim that the dismissal is not objectively justified, you have the right to demand negotiations in accordance with the provisions of the Working Environment Act Section 17-3.
Requests for negotiations must be submitted in writing within two weeks after the notice is received.
Law suits must be filed within eight weeks of the conclusion of the negotiations. If negotiations have not been held, legal action must be brought within eight weeks after the termination took place.

If you claim compensation, a lawsuit must be filed within six months after the termination took place.
If such a lawsuit is filed within eight weeks after the negotiations have ended or from the date the termination took place and within the expiry of the notice period, you have the right to remain in the position until the case is decided by a final judgment or ruling. The same applies if you have notified the employer in writing before the expiry of the notice period that a lawsuit will be filed within the eight-week deadline.

The employer and the right defendant is Lillevik Renhold A / S, represented by Managing Director Kari Holm.
(If the termination is based on the company's circumstances, the following must also be stated :)

You have a preferential right in the event of a new appointment to the company, unless it concerns a position for which you are not suitable. The preferential right applies from the time of termination and for one year from the expiry of the notice period.
With best regards,

Kari Holm, Lillevik Renhold A/S

	The starting point for an employment relationship is the principle of performance versus performance or ‘like for like’. An employee makes his labour available to his employer in return for the employer paying wages. If an employee believes that she has been illegally dismissed and the employer denies her the right to work, it is important that she continues to make her labour available. One way to do this is to send a text message or e-mail to the employer stating that she is contesting the dismissal and making her labour available. If she does not make her labour available, this could be a breach of the employment contract. Such a breach may be independent grounds for termination. If an employee does not make her labour available, she may lose her right to receive payment.
	3. PERIOD OF NOTICE
	In order to protect the parties' interests, the law has provisions pertaining to the period of notice. The period of notice is the time the employment continues after the dismissal has been notified and until the employee leaves the position.
WEA Section 15-3	The mandatory period of notice varies with the employee’s seniority (i.e. length of service) and age. In certain cases employees have a longer period of notice when the notice of termination is issued by the employer. The form below shows the period of notice in various cases:

Length of service	**Employee gives notice**	**The Employer gives notice**
Agreed written probationary period	l4 days	l4 days
0-5 years	l month	l month
5-l0 years	2 months	2 months
l0 years and more	3 months	3 months
Over 10 years and the employee is:		
50 years	3 months	4 months
55 years	3 months	5 months
60 years	3 months	6 months

Agreed period of notice	Legislation governing the period of notice does not prevent your employment contract or collective agreement from giving you a longer period of notice.
Shorter period of notice WEA Section 15-3 (1)	As a starting point, no shorter period of notice can be agreed than that stated by law. For enterprises that are bound by collective agreements, the employer and the union representative in the enterprise may enter into an agreement on a shorter period of notice for the employees before the dismissal has taken place.
When does the period of notice commence? WEA Section 15-3 (4)	The period of notice runs from the first day of the month after the termination was issued. For example, if an employee submits her or his notice on 23 February, the period of notice begins to run on 1 March. If there is a three-month period of notice, the employee must not normally resign before 1 June.
When is a notice of	A dismissal has taken place when it has reached the employer or employee. This requirement will be met

termination deemed to have been received? WEA Section 15-4 (2)	when the notice is personally handed over to the employee, or when the employee picks up the notice within a reasonable time at the post office after receiving a collect notice for registered a letter.
Notice of termination during probationary period WEA Section 15-3 (7)	During the probationary period, a mutual period of notice of 14 days applies. This only applies if the notice is given before the end of the agreed probationary period. In the event of termination during the probationary period, the notice period runs from the day the termination took place, as opposed to termination given outside the probationary period. Note that the probationary period must be agreed in writing in the employment contract. If a probationary period is not specified in the employment contract, you do not have a probationary period and the normal period of notice applies.
Termination on lay-off WEA Section 15-3 (9)	Employees who are laid off without pay in connection with a reduction in operations or downtime may apply for a unilateral period of notice of 14 days. This applies regardless of the notice period that follows from the law or agreement. The period of notice then runs from the day the termination is received by the employer.

	4. THE REQUIREMENT FOR JUSTIFIED DISMISSAL
	4.1 Introduction

WEA Section 15-4 (3)	Strict requirements are set for the grounds for dismissal. The employee can demand written grounds for the dismissal.
Objectivity clause WEA Section 15-7 (1)	A dismissal must be objectively justified. In this chapter we will look in more detail at what is in the requirement for objective justification. A dismissal must be justified either by conditions on the employer's side (operational restrictions, rationalization and similar), or conditions on the part of employees (poor performance of work and similar).
Assessment of objectivity	The key factor in assessing objectivity is whether in accordance with a WEA assessment of the employer's and employee's needs, it is reasonable and natural that the employment is terminated.
	4.2 Discussion meeting
WEA Section 15-1	Before the employer reaches a decision on dismissal, there is a requirement that stipulates the employer, as far as is practically possible, discusses the issue of dismissal with both the employee and the union representative in the company. An employee is summoned to a discussion meeting when the employer considers dismissing the employee. The purpose of a discussion meeting is for the employer to be able to make the necessary assessments with regard to whether the dismissal is objectively justified. In a discussion meeting, the employee shall have the opportunity to comment on his or her side of the case. If you are called to a discussion meeting and want to

	keep your job, it is important that you tell why you should keep the job and what consequences it will have for you to lose your job. Important issues to mention in a discussion meeting are, for example, qualifications and social issues. The employee should be summoned to a discussion meeting in good time, so that she has the opportunity to prepare. The employee should be summoned to a discussion meeting in good time, so that she has the opportunity to prepare. The employee can bring a company union representative or another adviser of their own choice to the meeting. Minutes *should* be kept from the discussion meeting, as this can be important evidence in a possible conflict later. If you agree with the minutes of the discussion meeting, you and your employer should sign. JURK recommends that you only sign documents that you understand and agree with. If no discussion meeting has been held, this does not automatically lead to the termination being considered invalid. However, this may indicate that the employer has not made the necessary assessments of whether the dismissal is objectively justified. An unjustified (unfair) dismissal may be declared invalid by the courts. It is a requirement that a discussion meeting be held "as far as is practically possible" unless the employee does not wish for this.
	4.3 Termination due to circumstances on the part of the company. Also known as redundancy
WEA Section 15-7 (1)	A dismissal based on the company's circumstances

	may, for example, be due to operational restrictions or rationalization measures. The employer is not obliged to maintain or create a position when it is no longer needed, but must prove that termination is necessary due to the company's finances. It is not a condition that the company goes bankrupt or has poor finances for the dismissal to be considered objectively justified. However, the employer must document the business need for the dismissal.
Additional requirements for objectivity WEA Section 15-7 (2)	In the event of redundancies due to operational restrictions or rationalization measures, additional requirements are stipulated for the objectivity of the redundancy: • That employer does not have other suitable work to offer the employee. • That the company has assessed the company's needs against the disadvantages a dismissal entails for the employee.
	4.3.1 Other suitable work
	If an employee is dismissed due to the company's circumstances, the employer is obliged to investigate whether there is other suitable work in the company for which the employee is competent. This is not necessarily a position at the same wage and responsibility / authority level, but the work should preferably be close to what the employee has had in salary and work tasks. If an employee refuses a suitable job, she will find it difficult to win a lawsuit for invalidity. If there is other suitable work in the company for which the employee is qualified, the employer is

	obliged to offer this work to the employee. This also applies if the employee can be qualified for the job through regular training work (as is the case with most new engagements). If the employer fails to do this, the dismissal may be unfair.
	4.3.2 The company must make a concrete and sound assessment
Balance of interests WEA Section 15-7 (2)	Even if the dismissal is objectively justified in the company's circumstances, it must also be objectively justified to the employee. The employer must make an assessment where she weighs the company's needs against what a dismissal entails in terms of disadvantages for the employee. If the dismissal has major consequences for the employee, and it has minor consequences for the employer that the employee continues in the position, the dismissal may be unfair. Arguments that argue that the dismissal is justified may, for example, be that the company is running a loss, a desire to increase profits or that work force reductions are necessary to ensure continued operation. Arguments that speak against the dismissal being fair will be what opportunities the employee has to find a new job within a reasonable time, the age of the employee, length of service and what social challenges the employee and her family will be exposed to in the event of dismissal.
	4.3.3 Selection
	When the dismissal occurs due to the company's circumstances, the employer will usually have several employees to choose from. The employer cannot make random dismissals. The choice between who is to be

	dismissed must also be objectively justified. The employer must have chosen guidelines for the selection of who is to be dismissed and must have followed these. These guidelines must be objective. Among the factors that the employer should take into account and which are objective in the selection process are seniority, employees' suitability and social conditions. The employer must make a broad assessment, where the various selection criteria must be weighed against each other. The selection criteria may have different weightings in different situations. *Seniority* Seniority is the time an employee has been employed in a company. This is often a key element in the selection process. There must be solid grounds if a company is to deviate from emphasizing seniority if there is is a question of differences in seniority of significant time periods. If the employee otherwise has equal qualifications, the employee with the longest seniority often takes priority. Stricter seniority rules may result from collective agreements. *The employee's suitability* The employer can also place emphasis on the suitability of employees. This can include formal competence, relevant professional experience, personal suitability, applicability in the position and profitability for the company. It may be relevant to give qualifications greater weight than seniority in some cases**.** Examples of this are where the company has a strong need for employees with recent and more up-to-date knowledge in the areas in which the company operates.

	Social circumstances The employer can also emphasize social factors in the selection process. This means that the consequences the employee must face if dismissed can be important. For example, employees' dependency burden, health, debt burden, opportunities in the labour market and mobility can be taken into account. *Employees' absence through illness* The Employer should be very careful about emphasizing sick leave or future anticipated sick leave in the selection process. Pursuant to the Working Environment Act, sick employees have general protection, while at the same the employee's absence through illness can be a cost and burden for the employer. If the employer has a well-founded presumption with regard to future sick leave, it may in some cases still be reasonable to emphasize this in the selection process. In a selection process, the employer cannot emphasize employees' political views, membership in trade unions and the like. This may be discrimination. There may also be discrimination if the employer emphasizes, for example, pregnancy, gender, religion and ethnicity in the selection. Discrimination is prohibited.

	4.4 Dismissal due to circumstances on the employee's side
WEA Section 15-7	If an employee has neglected his duties or behaved reprehensibly, this may result in dismissal. In the following we will look at conditions on the employees' side that may give rise to dismissal.

	4.4.1 Inadequate work performance
	It is the employment contract and the job description / work regulations that provide the starting point for what the employees' work obligations and tasks in the company are. The Employer can stipulate requirements for the quality of the work the employee performs. There are nevertheless limits to how stringent such requirements can be. Even if an employer is dissatisfied with an employee's performance, this does not automatically provide valid grounds for dismissal. The employer cannot expect “the perfect employee”.
Factors in the assessment	What is considered to be inadequate work performance must be considered specifically in each individual employment relationship. Factors of importance for the assessment include whether the failure in performance is of a significant nature, whether it is an individual case or whether it has taken place over a longer period of time and whether it is probable that the failure is of a temporary nature. If the company has tried to provide employee training and instruction without the person in question having improved, this could provide the employer a reason for dismissal. Note that the employee must have had the opportunity to improve. If the person in question has been given the opportunity to improve their work performance without having accomplished this, it may mean that the dismissal is justified. In practice, it will be of great importance if a written warning has been given without the employee having adjusted. For some positions, training or introduction to the position's scope and area of work will be necessary. If

	the employer has not provided reasonable training or instruction, this may mean that a possible dismissal based on inadequate work performance is not justified.
	4.4.2 Unlawful absence
	Concerning absence from the workplace, it is important to distinguish between lawful and unlawful absence. The absence is lawful if the person is ill (and the rules for self-declaration and sick leave are followed). Absence should be notified as soon as possible. In order for absence to be emphasized in the event of termination, it must be an unlawful absence of a certain duration and / or frequency. Whether the absence can provide grounds for dismissal depends on the nature of the work and the conditions in the workplace. In a workplace where it is common to arrive a little late for work, the late attendance cannot be used as a basis for dismissal. Conversely, dismissal for a lesser cause can be considered objectively justified if the employer has strict rules for punctual attendance at the workplace. In such instance it will be of import whether the employer has issued a written warning about the absence and given the employee the opportunity to improve.

	4.4.3 Refusal to obey orders
	The Employer can give the employee orders for various tasks to be performed. If the employee does not follow such an order, the employer will be able to react with termination or summary dismissal. Examples of refusal to order are that the employee refuses to perform a special job, or that the person in question refuses to work overtime without a valid reason.

	Reasonable grounds for refusing an order exist, among other things, in cases where the order given is unlawful. Further, it will be important how clear and concise the order from the employer was, and whether the employee was told what consequences it would have if the employee did not execute the order.
	4.4.4 Duty of loyalty, theft and pilfering
Duty of loyalty	The employee is obliged to look after the company's interests. This is called the duty of loyalty. Violation of the duty of loyalty can provide grounds for termination of employment or summary dismissal. A typical example of disloyal behaviour on the employees' side is that the employee describes the company or its product in a derogatory manner, or that the employee provides sensitive information about trade secrets to competitors. The employee has a duty not to disclose production secrets to third parties. Violation of this duty will most often result in dismissal. It is not required that the employer has suffered a financial loss as a result of employees' utterances. It is sufficient that the employee has provided information about the company that he or she should not have provided.
Theft and pilfering	Theft and pilfering are punishable crimes and in most cases will result in that dismissal must be deemed to be lawful. The employer must however be able to provide proof that the employee is guilty of theft or pilfering.
	4.4.5 Serving a prison sentence
	If an employee has to be away from work due to serving a prison sentence, this may be a valid reason

	for dismissal. Whether the absence may be grounds for dismissal must nevertheless be considered in each individual situation. The length of the sentence is of great importance. The starting point is that the employee herself is responsible for the fact that she cannot fulfil her duty to work due to imprisonment. When assessing whether an employer can dismiss an employee due to imprisonment, there are several factors that may be important. This can include: the length of the sentence, the company's financial situation and how long the employee has been employed. Several factors are whether the employee has tried to limit disadvantages for the company by informing the employer as early as possible about the judgment and when the sentence shall be served and the opportunity for the employee to find other work after serving the sentence. In the case of remand in custody, an employer should be more careful about dismissing an employee. In such cases, the employees' possible culpability for the criminal act has not been proven and it is not certain that the employee is responsible for the absence.
	4.4.6 Bullying and sexual harassment
	En employee’s conduct towards colleagues can also make sanctions by the employer necessary, such as for example termination or summary dismissal. Examples of behaviour that can lead to sanctions are if an employee freezes out, harasses, makes unwanted sexual advances, or commits abuse against his colleagues. In the event of such conduct, the employer will be able to react with termination or dismissal. It is not a pre-condition that the employee’s conduct is

	punishable.
	4.4.7 Substance abuse
AKAN	If an employee fails to attend at work due to substance abuse, this could provide grounds for dismissal or dismissal. The same applies if an employee shows up for work under the influence of alcohol and/or narcotics etc. The degree of intoxication, frequency and the employee's personal and social circumstances are among key factors in the assessment of which sanctions are legal. The Employer should attempt to resolve the matter in co-operation with the union representative. A number of large companies have committed to the AKAN co-operation (*Arbeidslivets kompetansesenter for rus- and avhengighetsproblematikk*). AKAN is an offer to employees with alcohol and other substance abuse problems, and aims for such employees to receive help so as to avoid termination or summary dismissal.
	4.4.8 On issuing cautions
	If a caution has been issued, this may affect an assessment of whether a dismissal or termination is fair. If the caution is to be of import in the assessment, the employee must have been given sufficient time to improve. The period of time a caution shall be of relevance in relation to an employee is unclear. A dismissal may be fair without any caution being issued, while in other cases several cautions may have been given without there being any reason for dismissal.

	4.5 Discretionary assessment
	A discretionary assessment must be used as a basis when the company wishes to dismiss an employee due to blameworthy circumstances on the part of the employee. Even if a blameworthy matter in isolation does not make a dismissal fair, it is possible that several of the above-mentioned factors in total provide fair grounds for dismissal of an employee.
	4.5.1 Burden of proof
	It is the employer who must prove that the dismissal is fair. In principle, it is not the case that the employee must prove that the dismissal is unfair, even if it is the employee who has raised the dispute.
	4.6 Dismissal due to organisational changes and similar
Employer's right to control	The employer has the right to lead, control, organize and distribute the work. This is called the employer's right to control. The employer may need to make changes in the business from time to time. The employer can usually do this by virtue of the right to control. The Employers' right to control is limited, among other things, by what has been agreed and by law. This means that the employer must stay within the framework of the employment relationship stated in the employment contract, the law and any collective agreement. If, for example, the employer reassigns the general manager to an office assistant, this will normally be contrary to the employment contract and thus be outside the employer's right of control.

	The assessment the employer must deal with is whether the change goes beyond the scope of the employment contract, law or any collective agreement. If the employer makes a change in the employment relationship that is outside the scope of the right to control, and the employee does not agree, this will be considered a *termination due to re-organisation* by the employer.
Rules governing termination due to re-organisation	In the event of a termination due to re-organisation, the employer must follow the same rules that apply in the event of a regular termination. For example, the rules on the discussion meeting will apply and the employer must be able to point to a factual reason for the termination due to re-organisation.
What can the employee do?	In the event of a termination due to re-organisation, the employee has the following options: 1. The employee accepts the change, and immediately commences in the new position by agreement with the employer. 2. The employee accepts the change, but chooses to work the period of notice in his old position. 3. Employee does not accept the change, and may choose to sue the employer or terminate the employment relationship after the end of the period of notice.

	5. SPECIAL PROTECTION AGAINST DISMISSAL
	5.1 Illness and adaptation

WEA Section 15-8	There are special rules on dismissal due to illness. If an employee is absent from work due to illness or accident, the employer cannot dismiss the employee on this basis. This protection against being dismissed due to illness only applies for 12 months after the incapacity for work occurred (the protection period). After this period, sick leave may be a valid reason for dismissal as long as the dismissal is objectively justified by law.
WEA Section 4-6 (1)	When an employee returns to work after being on sick leave for a period of up to 12 months, the employee shall, as a general rule, be allowed to continue in his or her normal or appropriate work. It may however be necessary for the employer and the employee to agree to facilitate adaptive measures to make it easier for the employee to continue in his or her normal work.
Adaptation WEA Section 4-6 (3)	The adaptation shall be stated in a follow-up plan which shall be prepared by the employer with the assistance of the employee. The purpose of the follow-up plan is to map out what the employee can do and cannot do in the workplace. Examples of facilitation according to the follow-up plan can be: • Physical adaptations • Changes in working hours, work tasks or work functions • Training and re-training
WEA Section 2-3 (2) litra f	Pursuant to current legislation, the employee is obliged to contribute to the preparation and implementation of the follow-up plan. The Employer's obligation to make individual arrangements is limited in cases where the employee does not co-operate on the follow-up plan

	and the following arrangements.
Burden of proof WEA Section 15-8 (2)	If the employee is dismissed during the protection period of 12 months, it is assumed that the absence due to illness is the reason for the dismissal. The employer must prove that there is another objective reason for the dismissal than illness. An employee who receives a dismissal during the protection period and who believes that the dismissal is due to illness can contest the dismissal.
	5.2 Pregnancy / Birth
WEA Section 15-9	Employees who are pregnant have a special protection against being dismissed. This protection means that the employer cannot dismiss an employee on the grounds that she is pregnant. Pregnancy is not a valid reason for termination.
Burden of proof	If the employee is dismissed when she is pregnant, it is assumed that the pregnancy is the reason for the dismissal. Then it is the employer who must prove that there is another objective reason for the termination than the pregnancy. Neither can employees who are on maternity and parental leave be dismissed during the leave due to absence. An employee who believes that a dismissal is based on pregnancy or leave can contest the dismissal.

	If you are unsure whether you have been dismissed because you are pregnant or on leave, you can read more in JURK's brochure "Discrimination" or contact JURK.
In brief on unemployment benefits	**5.3 Give notice or receive notice?**
	In an employment relationship, situations may arise that cause an employee to be faced with the choice of either giving notice or being dismissed. The consequences will be different.
Waiting period SSA. Section 4-9	If the employee is dismissed, the person may be entitled to unemployment benefits from the third day the person is unemployed. The person in question must register as a jobseeker with NAV in order to be entitled to unemployment benefits.
Extended Waiting period SSA. Section 4-10	If the employee herself gives notice or is dismissed due to the employee's circumstances, she risks an extended waiting period of 12 weeks to receive unemployment benefits.
	If you have questions about unemployment benefits, you can contact NAV on telephone number 55 55 33 33.

	6. PROCEDURE IN THE EVENT OF DISPUTE CONCERNING DISMISSAL
	6.1 The right to negotiations
WEA Section 17-3	An employee has the right to demand to negotiate with the employer on being dismissed.
Within two weeks	In order to be entitled to a negotiation meeting, the employee must request a negotiation meeting in writing within two weeks after the notice has been received. Even if the employee demands a negotiation meeting after this deadline, the employer *can* choose to agree to negotiations. The employer is obliged to hold the meeting as soon as possible, and no later than two weeks after the request has been received. If the parties agree, the meeting may be held later. The employee has the right to bring a union representative from the workplace or other advisers, such as a legal assistant to the negotiation meeting.

	Example of a litra from an employee demanding negotiations:

Lillevik, 30th January 2020

Employer: Lillevik Renhold AS
Address: Pb. 7, 1234 Lillevik

Regarding the dismissal of Marte Kirkerud on 20th January 2020

I, Marte Kirkerud, refer to the notice of dismissal from from you dated 20 January 2020.
I dispute the dismissal and believe it is unfair. I hereby request a negotiation meeting, cf. the Working Environment Act (WEA.) Section 17-3.

The negotiation meeting shall pursuant to the rules in the WEA. Section 17-3 No. 3 be held no later than two weeks after a request to this effect has been received.

I request a written account of the circumstances on which the dismissal is based, cf. WEA. Section 15-4 No. 3, cf. WEA. Section 15-7, and request that I receive this well in advance of the meeting.

At the negotiation meeting, I will have a lawyer with me. I can be contacted by phone on tel. 11 11 11 11, so that the time and place for the meeting can be agreed in more detail.

With regards

Marte Kirkerud.

The employer can demand negotiations	If the employee does not demand a negotiation meeting, but wishes to sue, the *employer* can demand a negotiation meeting. The employer must submit the demand in writing and no later than two weeks after the employer has been notified that a lawsuit will be filed. The employer must also in this case arrange for the meeting to be held, and the employee is obliged to attend.
	6.2 The negotiation meeting
WEA Section 17-3	The purpose of a negotiation meeting is for the employee to clarify whether the employer has a valid reason for the dismissal. Minutes (minutes) or an agreement reached in the the negotiation meeting shall be drawn up and signed by the parties and their advisers prior to the end on the meeting. The minutes shall normally be written by the employer and shall mention the parties' standpoints and / or what the parties have agreed on. The minutes can be used as evidence later. It is therefore important that you do not sign something you do not agree with or do not understand. You can also take the minutes home and read through them before signing. The negotiations shall be concluded no later than two weeks after the first negotiation meeting. Negotiations can be extended if both parties agree.
	6.3 Legal action before the courts
	If the employer does not withdraw the dismissal in the negotiation meeting, an employee who still wishes to contest the dismissal can take legal action. In such case she must give the employer written notice that she will go to court within certain stipulated deadlines.

	It is important to contact a lawyer or union as soon as possible after the dismissal is received. The union can provide help and legal assistance while the case is ongoing. This usually presupposes membership in the union for a stipulated time period prior to the dispute with the employer arising. The Norwegian Labour Inspection Authority can answer general questions about dismissal free of charge. You can call the Norwegian Labour Inspection Authority on 73 19 97 00.
	6.4 Deadline for raising legal action
	6.4.1 When all formalities are in place
WEA Section 17-4	If the employer has given a formal notice of dismissal, and the employee wants the position back, the employee must file a lawsuit within eight weeks of the conclusion of the negotiations. If no negotiations have taken place, the deadline is eight weeks from the time the written notice was received by the employee.
Compensation	If the employee only wants to demand compensation, the deadline is six months calculated from the date of the notice of dismissal. The employee and employer can agree to extend the said deadline.
	6.4.2 When formalities are not fulfilled
WEA Section 17-4 Civil Dispute Act Section 1-3	If the notice of dismissal does not satisfy the formal requirements, no time limit for legal action applies. However, the employee should not wait too long, as she may lose the right to make claims if she waits

	longer than she should. (CDA. Section 1-3 (2))
WEA Section 15-5	A dismissal that does not satisfy the formal requirements and which is contested within four months after the employee received the dismissal, will as a starting point be declared invalid by the courts. If this would be manifestly unreasonable, for example if it has been so long that the parties have adapted to the dismissal, the court may nevertheless decide that the dismissal shall not be declared invalid.

	6.5 The right to remain in the position
WEA Section 15-11	If the employee has demanded negotiations with the employer within two weeks of receiving notice, the employee has the right to continue in the job until the negotiations are concluded.
The duty to work and to pay wages is maintained WEA Section 15-11 and Section 17-4	If the employee has filed a lawsuit in the courts within eight weeks of the negotiations being concluded and given written notice of this within the period of the notice, the employee has the right to continue in the position while the dispute is ongoing. The right to remain in the position means that both employees' duty and right to work remains, as well as the employer's duty to pay wages. These rights remain in force until the case is decided by the courts by final judgment. The employer may, however take legal action and demand a ruling for the employee to leave the position.
WEA Section 15-11	In some cases, the employee is banned from the workplace even though she has the right to remain in the position. If the employee is banned from the workplace after the period of expiry of the notice, he or she must demand to be allowed to return to work (re-

	entry) within four weeks of the ban. The claim must be submitted to the courts, and the court will issue a ruling for re-entry if it concludes that the ban is unlawful.
WEA Section 15-11	The right to continue in the position does not apply to externally hired employees, to temporary employees, or if the employee is working a probationary period. In order to be entitled to remain in a position in these cases, there must be a court decision and the employee must demand this.
	6.6 What is required during a legal action
	6.6.1 Dismissal ruled unfair and invalid
WEA Section 15-12	The court shall assess whether the employee has been unfairly dismissed. If this is the case, the employee may have the right to keep the job. Even if the courts find that the dismissal is unfair, the courts can still decide that the employment relationship ends because it is clearly unreasonable for the employment relationship to continue.
	6.6.2 Compensation
WEA Section 15-12	The employee can demand compensation if the rules governing dismissal are breached. Compensation can be divided into three categories:
Loss of income	• If the employee has suffered economic loss, compensation can be demanded for *loss of income*.
	• If the employee does not return to work, she can claim compensation for *loss of future income*. Whether one is entitled to such compensation and

	how large the compensation may be, depends on a specific assessment of, among other things, the prospects of getting a new job in the future.
Compensation for non-pecuniary losses	• Compensation (redress) for non-pecuniary damages can be demanded by the employee regardless of whether she has had a financial loss. This type of compensation shall compensate for any inconvenience or psychological stress that has been inflicted on the employee.
	• The employee should attempt to limit her losses in future income by applying for new work.

	7. PROCEDURES IN CONNECTION WITH DISPUTES CONCERNING DISMISSAL
WEA Section 15-14	As mentioned in the introduction, the employment relationship is terminated immediately upon dismissal. It therefore takes far more for an employee to be SUMMARILY dismissed than dismissed. The consequences are also different, as summary dismissal means that the employee must leave the workplace with immediate effect, while an employee who is dismissed remains in the position throughout the period of notice.
WEA Section 15-11	If a dispute arises as to whether a summary dismissal was lawful, this dispute is dealt with in the same way as in the case of dismissals. However, the employee is not entitled to remain in the position during the dispute unless the court decides that he or she can do so. If the employee believes the summary dismissal is unlawful, he or

	she is responsible for taking legal action.
WEA Section 15-14	The court may declare the summary dismissal invalid if it was not lawful. Even if the summary dismissal was not lawful, the court may decide that the employment relationship shall be terminated. This can happen if the court finds that the conditions for *fair dismissal* are present.
WEA Section 15-14, Section 17-3 and Section 17-4	The main rule that a dismissal that does not meet the formal requirements shall be declared invalid does *not* apply to summary dismissal. If the employee has been summarily dismissed, the employee must bring a legal action within eight weeks of the summary dismissal being given or of the negotiations being concluded. If no negotiations have been held, the deadline is eight weeks from the time the summary dismissal took place. The employee and employer may agree on a longer time limit for legal action. If the employee only wants to claim compensation, the time limit for legal action is six months.
WEA Section 15-14	The employee may also claim compensation for an unfair summary dismissal.

	8. PREFERENTIAL RIGHT TO NEW SUITABLE POSITION
Permanent employee WEA Section 14-2	If an employee is dismissed due to circumstances on the part of the company, he or she has a preferential right to a new suitable position in the company. A prerequisite is that it concerns a position the employee is qualified for. It is also a condition of such preferential right that the

	employee has been employed by the company for at least 12 months during the last two years. The right to a new suitable position applies from the date of the termination notice and for one year from the expiry of the period of notice.
Temporary employee WEA Section 14-2	An employee who is employed for a specific period of time or to perform a specific work of a temporary nature also has preferential right. However, the preferential right does *not* apply to temporary staff. If an employee is offered a new suitable position, she must accept this job within 14 days. If she fails to do so the right lapses. If there are several persons who have preferential rights to the same position, the employer's selection must be fair. The employer shall then take into account the same conditions as in the event of dismissal due to operational restrictions, such as seniority, qualifications and social conditions.
WEA Section 17-3 and Section 17-4	If a dispute arises because the employee claims that the employer has not safeguarded preferential rights, the employee can demand negotiations and take legal action. The deadline for demanding negotiations is 14 days, the deadline for instigating legal proceedings is eight weeks and if the employee only wants to claim compensation, the deadline is six months. The deadlines for demanding negotiations or bringing an action run from the time the employer has rejected a demand from the employee for preferential rights to a new position. The employee and employer can agree on a longer time limit for legal action.

	9. RIGHT TO A WRITTEN WORK RECORD
	9.1 On receipt of a notice of termination
WEA Section 15-15	Upon termination of employment, the employee is entitled to a final certificate / written work record. In order to obtain a final certificate, the employee must as a rule has worked out the period of the notice, unless it is agreed that the employee will not work during this time. The certificate must contain information about the employee's name, date of birth, what the work has consisted of, and the duration of the employment relationship. In work circumstances where it is common practice, the employee may require a more detailed certificate.
	9.2 On summary dismissal
	An employee who has been summarily dismissed also has the right to a final certificate, but the employer has the right to include in the text of the certificate that the employee received a summary dismissal.

	10. AGREEMENT ON CESSATION OF EMPLOYMENT
	10.1 Introduction
	The employer and employee can enter into a final agreement when the employment arrangement ends. Such agreements can also be called a *severance package* or in some cases a *redundancy package*. Such agreements are not legislatively mandatory, but are voluntary between the parties. What characterizes a final agreement is that the parties agree on a termination point for the employment relationship and for the detailed conditions for this. The purpose of a final agreement is to end the labour dispute between employee and employer. A final agreement can be entered into either when the employee gives notice or when she receives a notice of termination or summary dismissal. A final agreement can also be entered into before a notice of termination is given. In practice, a final agreement will typically be the result of negotiations after a negotiation meeting. In some industries, it is common for an employee to receive a severance package after the employment relationship ends.
	10.2 Content of the final agreement
	A final agreement binds employer and employee. It is therefore important that the agreement is

Examples of content	clear and unambiguous, and that the parties agree on the content. What a final agreement entails will vary. Examples of what can be agreed in a final agreement: • Whether the employee receives a severance package of a certain amount • Payment date for the severance package • Date of cessation of employment • The right to pension and insurance rights from the employer • Redress • Whether the employee is exempt from the obligation to work during the period of notice • If the employee waives the right to take the dismissal to court
Agreed and settled clause	When concluding a final agreement, the employer may wish to prevent the employee from taking the case to the courts. To ensure this, a so-called "Agreed and Settled clause" is often incorporated in the final agreement. It is important to keep in mind that an absolute waiver of the right to sue the other party can be unfortunate. The final agreement may have an impact on employees' rights to social security benefits. What has been agreed, including the final day of work and payment of severance pay, may have an impact on the amount and payment of benefits from NAV, such as unemployment benefits.

	JURK recommends that you contact NAV if you have questions relating to benefits in connection with a final agreement.
	10.3 In particular on invalid final agreements
	Final agreements are not regulated under the Working Environment Act or other labour law laws, but follow from principles in contract law. A final agreement can be considered invalid, in the same way as other agreements. If a final agreement is deemed to be invalid, the parties who have entered into the agreement are not bound by it. (General principles of contract law) You can contact JURK if you have questions about the rules on invalid final agreements. There must be solid grounds for a final agreement to be considered invalid. Several factors are emphasized in the assessment. For example, whether the employee is given a choice or time for reflection before the agreement is signed, whether she is informed of her right to demand negotiations, whether she is allowed to bring an adviser to a meeting and whether she is in a worse financial position than if she had not entered into the agreement.
	10.4 Extended waiting period
Extended waiting period	To be entitled to unemployment benefits, you must register as a jobseeker with NAV. Basically, an employee can receive unemployment benefits three days after she became unemployed. This is called the waiting

	period. Sometimes, however, the employee has to wait longer before receiving unemployment benefits. This is called an extended waiting period.
SSA. Section 4-10	In cases where an employee has resigned or left without reasonable cause, there will be an extended waiting period from the time an application for benefits was submitted until the employee can receive unemployment benefits. The same applies in cases where the employee is summarily dismissed or dismissed due to circumstances on the employee's side.
12 weeks extended waiting period	The extended waiting period runs from the time at which the benefit is applied for, and is set at 12 weeks in the circumstances mentioned above. If an employee has entered into a severance agreement with wage rights (severance package), the extended waiting period will only begin to run from the time the severance package no longer replaces her lost earnings**.** This is because the employee in the period she receives the final payment does not meet with the conditions for loss of earnings. JURK will note that even in cases where the employee does not have an extended waiting time according to the law, such as in the event of downsizing, the employee cannot receive unemployment benefits until the final settlement or severance package has been paid out. There are exceptions to the rules on extended waiting periods. You can read about these on NAV's website.

	11. LAY-OFF (ALSO CALLED FURLOUGH)
	11.1 Introduction
	In the event of lay-off, the employee is exempted from the obligation to work, either completely or by reduced working hours per day or week. The employer may lay off an employee due to circumstances in the company, such as operational restrictions. The employer, for his part, is exempted from the obligation to pay employee wages for the hours no longer worked.
Temporary suspension of the obligation to work and to pay wages WEA Section 15-3	As laid off, an employee is still employed, with the right and duty to return to work when the layoff ends. It is important to remember that the parties' mutual duty of loyalty exists during the layoff. The employee is nevertheless free to apply for a new job and thus resign from his job. If an employee wishes to resign during the lay-off period, the period of notice is 14 days, regardless of which period of notice has been agreed in advance. The period of notice is calculated from the employer has received the notice. A distinction can be made between full and partial layoff. Full layoff means that the employee is completely exempt from the obligation to work. Partial layoff means that the employee has reduced working hours, i.e. a combination of work and layoff.

	11.2 Prior to layoff
	There is no legislation regulating the right to layoff. However the main LO-NHO agreement has rules on this, but only applies to those who are party to the agreement. It is nevertheless assumed that all employees should, as a general rule, follow the principles of the Main Agreement or the procedure for termination.
Written notification of layoff	According to the Main Agreement, written notification must be given 14 days before the layoff begins. The notification must state how long the employee will be laid off. If the employer does not know how long the layoff period will be necessary, the notification shall contain a point in time when the need for layoff will reassessed. This date must not be fixed to more than one month after the layoff starts. A discussion meeting must be held with the union representative before notification is issued. In the event of layoff, pursuant to the Working Environment Act, an employee has neither the right to demand a negotiation meeting nor to remain in the position while the dispute is ongoing. If the employer fails to observe the notification deadline or fails to hold a discussion meeting, the layoff is not automatically unlawful. However, this will be worthy of criticism as it may be a sign of poor judgment. It is therefore a factor in the assessment of objectivity (see below) if the employer does not follow these principles.

	11.3 “Due cause”
	For layoff to be legal, the employer must have due cause that makes layoff necessary. A prerequisite for the layoff to be fair is that the employee will be readmitted to work, and the employer has made a proper assessment. Reasonable grounds for layoff may be incidents such as operational restrictions, downtime, fire, flood and other unforeseen incidents in the workplace that make operation impossible for a temporary period. Lack of turnover and purely financial considerations are not sufficient - the basis for layoff must be due to a lack of work that the employer himself has not influenced. The need for layoff must be of a temporary nature. In addition, the employer must have reasonable grounds to believe that conditions will improve within a certain time. If there are no real prospects for improvement of the situation, a layoff will not be objective. In such cases, the employer's only opportunity to be released from the wage obligation will be dismissal based on the company's circumstances. Layoff shall not be used as an alternative to termination of employment. The requirement for objective reasons applies throughout the period the employee is laid off. This means that the employer must regularly assess whether there is a basis for continued layoff and inform the employee on an ongoing basis. According to the Main Agreement, layoff in

Main agreement Section 7-1 second paragraph	excess of six months must be agreed between the employee and the employer in order for it to be legally continued. If the employee believes that after a period of time the layoff is no longer fair, the obvious first move will be to request a meeting with the employer.
	11.4 Termination and layoff
	11.4.1 The employee hands in his or her notice
	An employee who is laid off without pay can terminate the employment contract by giving 14 days notice, regardless of which period of notice follows from legislation or the contract. The period of notice commences on the day the notice is received by the employer. If you have questions about the employer's possible wage obligation in the event of dismissal during layoff, you can contact the Norwegian Labour Inspection Authority.
	11.4.2 Termination during layoff
	If the employer dismisses the employee during layoff, the employee will, as a starting point, have a duty and a right to work out the period of the notice. Correspondingly, the employer will have a wage obligation until the period of the notice, and this applies even if the employer does not have a job to offer**.** It is only if the employee hands in notice that there is a period of notice of 14 days. If the

	employer dismisses an employee, the usual rules for dismissal apply. The purpose of this is that the employer shall not be able to lay off employees to circumvent the rules on period of notice.
	11.5 Wages during layoff
Mandatory Wages Act Section 3 (1) SSA. 4-7	As a general rule, the employer must pay wages for the first 15 working days of the layoff period. After the period of wage payments from the employer, the employee can receive unemployment benefits from NAV.
	If the layoff is due to fire, accidents or natural circumstances, this does not apply**.** The wage obligation then passes directly to NAV. Employees should report to NAV as soon as possible after notice of redundancy has been given.
SSA Section 4-7	The layoff period with unemployment benefits is limited to 26 weeks within a period of 18 months**.**
	11.6 Layoff as covert termination
	Layoffs shall not be used to circumvent the rules on termination of employment. From experience, employees choose to lay off in the hope that the employee will get a new job by the end of the layoff. In this way, the employer avoids paying the salary that the employee would have been entitled to during the period of the notice. This can be covert termination.

	Where the employer knows that the layoff will be long-term, the employer must dismiss the employee due to the company's circumstances and pay wages during the period of the notice. If the employee believes that dismissal should have been granted rather than layoff, he or she can request a meeting with the employer or contact a lawyer.

	12 WHERE YOU CAN GET HELP
	12.1 JURK
	JURK is an independent legal aid group where law students provide free help in cases concerning laws and regulations in Norway. Because all answers must be quality assured, JURK answers by litra. We have a case processing time of three weeks. JURK offers customized self-help help for anyone who defines themselves as female. As we are students, JURK cannot represent cases in court. You can read more about JURK on our Internet pages www.jurk.no. **Letters** to be addressed to: JURK, Skippergata 23, 0154 Oslo

We accept new cases:	**Telephone reception: T**elephone 22 84 29 50 Monday 12.00 – 15.00 Wednesday 09.00-12.00 and 17.00 – 20.00 Tel: 22 84 29 50 **Client reception in person** Skippergata 23, 4. floor Monday 12.00 – 15.00 Wednesday 17.00 – 20.00 You can also submit your case via our Internet pages at www.jurk.no. JURK does not reply to legal questions by e-mail.
	12.2 Other legal aid measures and public offices
	Jussbuss Telephone number: 22 84 29 00 Internet address: www.jussbuss.no **Jussformidlingen** Telephone number: 55 58 96 00 Internet address: www.jussformidlingen.no **Jusshjelpa i Nord-Norge** Telephone number: 77 64 45 59 Internet address: www.jusshjelpa.no **Arbeidstilsynet** Telephone number: 73 19 97 00

	Internet address: www.arbeidstilsynet.no **Rettshjelpssentralen** Telephone number: 22 69 86 10 Internet address: www.kirkensbymisjon.no/rettshjelpsentralen **Advokatvakten** Internet address: www.advokatenhjelperdeg.no/advokatvakten/

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