

What Should A Termination Agreement Contain?

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The easiest way to [terminate](#) an employment contract is by mutual consent. The arrangements made will then be laid down in a settlement agreement. What do you have to consider with regard to such an agreement?

What Does a Termination Agreement Have to Cover?

The most common matters to include in a termination agreement or settlement agreement are the following:

1. *Date of expiry of the employment contract*
This has to take into account the notional [notice period](#). An employee is only entitled to unemployment benefits after the notice period specific to the employer.
2. *Exemption from work / garden leave*
Is the employer granted paid leave from work fully or partly to the expiry date?
3. *Holidays*
Do untaken holidays have to be paid or taken?
4. *Reimbursement of study costs*
Establish whether or not a regulation regarding the reimbursement study costs incurred will apply.
5. *Severance pay*
The employer is not required to pay the employee [severance pay](#). However, such an offer will increase the likelihood of the employee's agreement. Regarding the amount it is possible to follow transition compensation, however, the parties can derogate from this.
6. *Final financial statement*
Set the date for the final financial statement. The final financial statement provides an overview on what the employer has to pay the employee and what the employee is still owing the employer, such as outstanding wages, untaken holidays or excess holidays taken, holiday allowance, thirteenth month salary, bonus, advance payments on wages or holiday allowance. In view thereof set the date on which the employee has to present outstanding invoices
7. *Pension accrual*
Pension accrual ceases upon the termination of the employment contract. Sometimes, employees can build up their pension on a voluntary basis.
8. *Use and return of company property*
Is the employee allowed to continue to use company resources and if so, until what date? What company property (for instance, access pass, laptop, mobile phone, lease car, etc.) does the employee have to return to the employer, and when?

9. *Post-contractual obligations*

Will a confidentiality obligation or non-competition and non-solicitation clause remain in full force and effect, or will they lapse or be restricted?

10. *Social media clause*

It may be established that the employee is not allowed to make unfavourable comments about the employer on the internet after the termination of the employment. And the employee can be required to unfriend professional contacts.

11. *Outplacement budget*

The employee may receive a budget for engaging outplacement services.

12. *Compensation for legal assistance*

The employer may offer the employee a budget for legal assistance.

13. *References*

Will the employee, upon request, receive a positive or neutral reference?

14. *Dismissal with immediate effect or death of employee*

It may be included that no rights can be derived from the termination agreement in case of dismissal or death of the employee between the signing and expiry date of the employment contract.

15. *Reflection period*

Within a period of two weeks after signing of the agreement the employee may, without giving any reason, withdraw the agreement in writing. The employer is required to point out to the employee this right of withdrawal. If he or she fails to do so the employee's reflection period will be extended to three weeks.

16. *Full and final settlement*

Employer and employee may grant each other full and final settlement regarding potential claims on the basis of the (termination of) the employment agreement. This will prevent future legal disputes on matters that are not explicitly covered by the termination agreement.

Entitlement to Unemployment Benefits

The entitlement to unemployment benefits after the termination of the employment contract is important to employees. To ensure that an employee will be entitled to unemployment benefits, the termination agreement the following must be included in the termination agreement:

- The initiative for the termination of the employment agreement was taken by the employer.
- The dismissal is not related to any urgent cause for dismissal ([dismissal with immediate effect](#)).

Annulment After Reflection Period

In exceptional cases, the settlement agreement may also be annulled after the reflection period, for instance, in cases of vitiated consent, such as error, fraud, or abuse of circumstances. In view of the nature of such an agreement, the Court will exercise utmost restraint when it comes to a request for annulment. For example, an employee cannot have an agreement annulled because of not having obtained legal advice.

If either of the parties fails to comply with the obligations contained in the settlement agreement, the Court may be asked to order performance or to terminate the settlement agreement in whole or in part. However, Courts have to be reserved with regard to such a request for termination.

More Information

Would you like more information on settlement agreements? Do you need help drafting or assessing a settlement agreement? Or do you have any other questions concerning employment law and dismissal? Please contact Russell Advocaten.

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