

FAQ on voluntary redundancy programmes

1. What is a voluntary redundancy programme?

A voluntary redundancy programme (“VP”) aims to carry out socially acceptable staff reductions via amicable arrangements with employees. Such a programme normally focuses on fixed conditions for severance payments under termination agreements or the specifics of early retirement or partial retirement solutions.

The voluntary programme can either be “offered” by the employer or regulated by a works agreement. The voluntary programme is often an important building block in staff reduction measures. A carefully thought-out overall strategy is therefore essential.

<p>Practical tip for companies: A voluntary programme should be considered at an early stage in the planning and timing of the restructuring process.</p>
--

2. What is the advantage of a VP?

The main advantage of a VP is that, unlike in the case of layoffs for operational reasons, there is no need to carry out a selection process among the participating employees based on social criteria. Voluntary participation also allows for speedy implementation of staff reductions. Time-consuming and costly unfair dismissal proceedings are likewise avoided. Importantly, in an ideal scenario dismissals for operational reasons can be avoided completely and the expert staff who are vital for the success of the company are retained in the organisation. A voluntary programme can thus also boost the acceptance of staff reductions within the workforce and prevent reputational damage.

<p>Practical tip for companies: In order not to jeopardise successful implementation of a staff reduction, layoffs for operational reasons should generally not be ruled out. Particular care must be taken in communicating with the works council and the workforce.</p>

3. Does an employee have a right to participation?

This depends largely on the structure of the programme. It is generally recommended that the “double voluntary” principle should be applied to the programme. This means that neither the employee nor the employer is required to sign a termination agreement or agree to an early retirement or part-time retirement solution. As such, employees cannot normally demand to be included in the programme. Such an entitlement would involve the risk that employees essential to the business or to production operations – or simply too many employees – would join the programme.

Practical tip for companies: Take care not to establish a right to participate in a voluntary programme.

4. Can employees be actively encouraged to take part?

This also depends largely on the programme's structure. In practice, works councils often want to avoid employers approaching employees who they hope will participate in the voluntary programme, e.g. via their line manager, in order to avoid pressure being exerted. It is important here to develop a process flow acceptable to all parties during the negotiations with the works council. Strictly speaking, however, the works council cannot prevent employees from being actively targeted.

5. How can employers ensure that the “right people” leave the company?

Before carrying out the VP, it is advisable to prepare an “ABC list” or “traffic light list”. Managers should rate employees as top performers, average employees, or underperformers. Nevertheless, it is important to remain realistic: often it is precisely the employees the employer would like to lose who are not prepared to leave the company voluntarily.

6. What is the recommended duration of a voluntary programme?

If the voluntary programme is part of a range of restructuring measures, a short duration of 1-2 months is generally recommended. Experience suggests that employees adopt a wait-and-see attitude when longer periods are chosen, and hope that they will not be affected by the restructuring. The acceleration of staff reductions that is often the aim of a voluntary programme is thus jeopardised if the programme runs for a long time.

Practical tip for companies: Communication of the planned staff reductions and the role of the voluntary programme need to be carefully structured. It must be clear to potential addressees of the programme that they would be affected by the subsequent staff reductions.

7. Does the VP require the works council's approval?

Generally, the works council has no automatic right of codetermination with regard to the structure of the voluntary programme. However, this always depends on the structure itself.

If the intended staff reductions are associated with a change of operations within the meaning of section 111 of the German Works Constitution Act (BetrVG), or if the staff reductions themselves constitute the change of operations, the voluntary programme is usually included as an implementation measure in the reconciliation of interests negotiations (see FAQ on reconciliation of interests agreements/social compensation plans). A voluntary programme may also precede the reconciliation of interests negotiations.

Ultimately, it is important to carefully weigh up which approach makes most sense. A voluntary programme is generally successful if it is supported by the works council.

8. What are the risks of not involving the works council?

If the voluntary programme is implemented without the approval of the works council, particularly before the end of the reconciliation of interests negotiations, this can be seen as an “anticipation of operational changes”. Accordingly, the employer may risk being issued with an interim injunction by the labor courts.

Practical tip for companies: It should be established in advance whether there is a risk of the works council claiming injunctive relief against unilateral implementation of the VP.

9. What is a turbo clause/sprinter clause?

In connection with a VP, reference is often made to a “turbo bonus” or “sprinter bonus”. This is an additional incentive for employees to participate in the VP generally or within a fixed period. As a rule, an additional sum is added to the existing entitlement to severance pay if a person is prepared to terminate their employment relationship quickly on the basis of a termination agreement.

In addition, a turbo clause/sprinter clause can be a provision in a termination agreement that allows an employee to leave the company prematurely – i.e. before the intended termination date – with a short notice period. Such a provision should be included in the model termination agreement.

10. Can the VP be accompanied by collective redundancies?

Since a termination agreement counts as “dismissal” within the meaning of section 17 of the German Act on Protection Against Unfair Dismissal (KSchG), the duty to inform and consult that applies to collective redundancies must be taken into account if the relevant thresholds are exceeded (see FAQ on collective redundancy). In addition, formal notification of collective redundancy must then be submitted to the Employment Agency. Errors in following this procedure will nullify termination agreements that require notification.

<p>Practical tip for companies:</p>	<p>In connection with a voluntary programme, it is important to assess at an early stage whether the thresholds of section 17 of the German Act on Protection Against Unfair Dismissal may be exceeded in aggregate. If this is the case, the information and consulting procedure pursuant to section 17 of the German Act on Protection Against Unfair Dismissal must also be carried out (as a precaution). In addition, employers should keep track of when the individual termination agreements are to be concluded in order to submit notification of collective redundancy in good time or to avoid the need for such notification.</p>
--	---

(Last updated: 9 April 2020)