

FAQ on cutting/cancelling remuneration components

1. What are remuneration components?

Remuneration components are all the items which together constitute an employee's remuneration. They include fixed remuneration as well as additional payments, special benefits (for example a Christmas bonus or 13th month's salary), bonuses, benefits in kind (for example a company car) and the company pension scheme.

2. Where and how are remuneration components agreed?

There are various ways in which remuneration components can be agreed. Such an agreement is often included in the individual employment contract. In many cases, however, remuneration components also result from a collective bargaining agreement, works agreement or company practice/collective commitment.

3. What needs to be clarified in advance by an employer in relation to cutting/cancelling compensation components?

The priority is to identify the legal basis (employment contract, collective bargaining agreement, works agreement, etc.) for the specific remuneration component because different mechanisms for cutting/cancellation will apply and the consent of different persons/bodies must be obtained depending on the legal basis. This has an impact on the timescale and thus on planning.

4. How can an employer cut/cancel a remuneration component agreed in an employment contract? Is this possible by notice of termination with the option of altered terms of employment?

First, it is important to check whether the relevant provision is indeed contained in the employment contract. An employment contract often only makes reference to a provision found elsewhere, e.g. in a works agreement; then the rules governing the "actual" source apply.

If there is such a provision in the employment contract, it may be subject to a right of revocation or a discretionary right. Caution is needed here: such provisos are only permissible within narrow legal limits. The best way to find out whether your specific proviso meets the legal requirements is to consult a lawyer specialising in labor law. If the right of revocation or discretionary right is valid, the employer can proceed by unilateral declaration.

If there is no (valid) revocation proviso, the employee's consent to cutting/cancelling the remuneration component is usually required. Another possibility is to issue notice of termination with the option of altered terms of employment, i.e. terminate the existing employment relationship in compliance with the ordinary notice period and then immediately offer a new employment contract with lower remuneration. However, such a notice of termination requires social justification. The desire to cut wage costs is usually not sufficient grounds.

5. How can I cut/cancel a remuneration component in a works agreement?

As a rule, the employer can stop voluntary benefits set out in a works agreement by terminating the works agreement. However, the consequences of termination vary depending on the works agreement. It is possible that the works agreement will continue to be effective until a replacement arrangement has been agreed with the works council. In this case, the employer remains obliged to pay the remuneration component even after the notice period has expired. However, it is also possible that the works agreement will cease to be valid on expiry of the agreed notice period. The details therefore need to be reviewed in the given case.

If remuneration components are cut, a new agreement with the works council on the reduced benefit is usually required because "distribution principles" are affected and a right of codetermination is thus triggered. Here again, the details are complex and must be reviewed individually.

6. How can a remuneration component based on a collective bargaining agreement be cut/cancelled?

If the collectively agreed remuneration is to be cut or cancelled, the agreement of the relevant trade union is required. This mostly proves very difficult unless decisive action is needed to put the business on a sound financial footing.

7. Can I, with the employee's consent, deviate from the remuneration rules set out in a works agreement or collective bargaining agreement?

This is not generally possible. The specific legal options depend on how the works agreement or collective bargaining agreement is worded, whether its provisions apply under collective or individual law, whether it contains escape clauses and the exact details of the intended agreement with the employee. Normally, however, less favourable provisions than those found in works agreements and collective bargaining agreements are not an option because the consent of the works council or the relevant trade union is required for such provisions to be valid.

8. How can I cut/cancel a remuneration component that is based on company practice/collective commitment?

Cutting/cancelling components based on company practice or collective commitment is possible with the consent of the employees. If there is a works council, it must usually be involved and a “less favourable works agreement” must be agreed with it; in doing so, the consent of the employees is replaced by the consent of the works council to the less favourable works agreement.

9. Do I have to involve the works council when cutting/cancelling remuneration components?

Cutting/cancelling remuneration components may be subject to codetermination rights under section 87 (1) no. 10 of the German Works Constitution Act (BetrVG), regardless of the legal basis. Notice of termination with the option of altered terms of employment also requires the involvement of the works council. It is best to consult a lawyer in this scenario, as the details are complex.

10. Do I have to comply with the principle of equal treatment when cutting/cancelling remuneration components?

Whether increasing or cutting/cancelling benefits, the employer must ensure that individual employees or certain groups of employees are not arbitrarily or inappropriately favoured or disadvantaged. Any differences therefore always require an objective reason to ensure compliance with the principle of equal treatment. What exactly the employer needs to take into account depends largely on the individual case and requires review by a lawyer. The basic rule, however, is that arbitrary action is always impermissible.

(Last updated: 18 May 2020)