

Protection against dismissal

Igor Kyrzewski · 24.05.2025 · Kadry i Płace – JDG, Kadry i Płace – Spółki

□□ Introduction

\The Labor Code provides for **special rules for the protection of employment relationships** for specific groups of employees. This protection can be **absolute** (prohibition of termination and dismissal) or **conditional** (e.g., requires the consent of the trade union). Violation of these rules may result in **reinstatement and compensation** awarded by the court.

□□ 1. Who is covered by special protection against dismissal?

□ Example groups covered by protection:

- Pregnant women - Prohibition of termination and dismissal
- Persons on maternity/parental leave - Prohibition of termination and dismissal
- Union activists - Prohibition without the consent of the union's board
- Employees in pre-retirement age - Prohibition of termination 4 years before retirement
- Employees during justified absence (e.g., sick leave) - Absolute prohibition of dismissal
- Members of the employee council - Consent of the council required
- Persons returning from childcare leave - Prohibition for 1 month after returning

□□ Protection applies to **both termination of the contract** and **dismissal without notice**.

□□ 2. Protection of pregnant women and those on parental leave

☐☐☐ Art. 177 § 1 of the Labor Code:

The employer may not terminate or dismiss an employment contract with a female employee who is pregnant or on maternity leave, unless there are grounds for termination **without the employer's fault** (e.g., bankruptcy, liquidation of the company) and the consent of the trade union has been obtained (if it operates).

☐ If the employee has **fixed-term contract**, and its **end falls after the 12th week of pregnancy** – the contract **automatically extends until childbirth**.

☐ 3. Union activists - Art. 32 of the Trade Unions Act

- The employer may not terminate or dismiss an employment contract **without prior consent from the board of the trade union** indicated in the information about the protection.
- This applies only to persons **designated in writing** by the union and holding office.
- Protection lasts for the duration of the term of office and for **one year after its termination** (if the protection lasted longer than 6 months).

☐ 4. Employees in pre-retirement age - Art. 39 of the Labor Code

- Prohibition of termination of the contract for an employee who is **no more than 4 years** away from reaching retirement age (60 years for women, 65 years for men),
- Condition: the period of employment gives the right to pension in the given workplace.

☐ The prohibition **does not cover termination by mutual consent or disciplinary dismissal** (if there are grounds according to Art. 52 of the Labor Code).

☐☐ 5. Employees absent for justified reasons - Art. 41 of the Labor Code

The employer may not terminate an employment contract while the employee:

- is on **sick leave (L4)**,
- is on **vacation leave**,
- is using **other justified absences** (e.g., parental leave, special leave).

☐☐ Protection does not apply to **termination of the contract without notice according to Art. 53 of the Labor Code** (e.g., long-term illness).

☐☐ 6. Protection against dismissal and position liquidation

- Protection **does not apply** if the workplace **is liquidated or declares bankruptcy** (Art. 177 § 4 of the Labor Code).
- In such a case, it is possible to terminate the contract even with protected employees, but often:
 - **agreements with the trade union** are required,
 - there is a right to **severance pay** (act on mass dismissals).

☐☐ 7. Violation of protection - consequences for the employer

- Dismissing a pregnant employee - Invalidity of the termination (Art. 58 of the Civil Code + Art. 45 of the Labor Code)
- Dismissing a union member without consent - Reinstatement + compensation
- Lack of a certificate of employment - Fine and compensation
- Pre-retirement dismissal - The court may rule on reinstatement or compensation

☐☐ Legal basis

- **Labor Code:** Art. 39, 41, 177
- **Trade Unions Act** – Art. 32
- **Employment Promotion Act** – rules of protection in the employment office
- **Supreme Court judgments**, including the judgment of March 14, 2018, I PK 297/17