Workx Advocaten

# DISMISSING A STATUTORY DIRECTOR IN 12 STEPS

A statutory director (statutair bestuurder) can be dismissed at any time by the body authorised to appoint them, usually the general meeting of shareholders (AvA). If the director is also an employee, the employment contract will as a rule end as well, without any prior review by the Employee Insurance Agency (UWV) or the subdistrict court. Care is essential under both company and employment law.

## 01. BEFORE THE GENERAL MEETING (AVA)

### 1 Personally a director?

Check whether the employee is personally a director of the company that employs them.

### 2 Valid appointment?

Check that the appointment was valid: a resolution of the competent body (this may be oral) and acceptance by the director. Evidence: the resolution, the Chamber of Commerce (KvK) registration and acting as a director in practice.

### 3 Review the articles of association

Who is competent (in a BV this may also be another body), which additional rules apply, who may convene and within what period? At least **eight days** for a private limited company (BV), **fifteen** for a public limited company (NV).

### 4 Convene the meeting

Convene the general meeting in accordance with the articles and also invite the other directors, supervisory directors and shareholders. State the items to be discussed.

### 5 Explain the reasons

Explain the reasons for the *proposed* dismissal in writing and in good time. Base them on a reasonable ground for dismissal, such as poor performance or a permanently disrupted working relationship.

### 6 Redeployment, settlement

Show that redeployment options have been explored. Consider offering a settlement agreement (vaststellingsovereenkomst, VSO); the director has no cooling-off period.

### 7 Works council advice

Before the resolution, ask the works council (OR) for advice (Article 30 of the Works Councils Act, WOR) if the director is also a 'director' (bestuurder) within the meaning of that Act. Hold at least one consultation meeting with the works council beforehand. In a reorganisation, Article 25 WOR may also apply.

### 8 Review the contract

Check the notice period, any golden parachute and the consequences for a non-compete or non-solicitation clause.

## 02. DURING AND AFTER THE GENERAL MEETING

DURING

### 9 Assign roles

Decide who chairs the meeting and who takes the minutes.

### 10 Hear the director

Explain the reasons further. The director must be **heard and has an advisory vote**; the other directors and supervisory directors also have an advisory vote.

AFTER

### 11 Adjourn, then decide

Adjourn the meeting. Only then adopt the resolution to dismiss the director **and** to terminate the employment contract.

### 12 Record

Record the resolution in the minutes. Observe the notice period or pay fixed compensation in lieu of notice. The transition payment is also due (1/3 of a monthly salary per year of service, subject to a statutory maximum), unless the director acted seriously culpably.

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WHY EVERY **STEP COUNTS**

**Company law: no ground needed, but correct procedure**

The wrong body, too short a convening period or a director who was not heard: the resolution may be void or be annulled. The termination of the employment contract can then also be challenged.

**No lighter test under employment law**

There must be a reasonable ground and redeployment options must have been explored. If not, the court may, at the director's request, award fair compensation on top of the transition payment.

**No reinstatement of the employment contract**

After a valid dismissal resolution, the court cannot reinstate the employment contract (Articles 2:134 and 2:244 of the Dutch Civil Code). Without a reasonable ground, the cost is therefore mainly financial.

Workx Advocaten, 2026
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