

YOUR EMPLOYMENT HAS BEEN TERMINATED - NOW WHAT?

A GUIDELINE DOCUMENT FOR EMPLOYEES WORKING IN ARCHITECTURAL FIRMS

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Introduction

This guideline document answers a number of questions that will be relevant in relation to employment termination.

The guideline document is aimed at employees covered by the collective agreement for architects (Arkitektoverenskomsten) with the Confederation of Danish Industry (DIO II). The guideline document is not a comprehensive description of all aspects and you should contact the Architects' and Designers' Union (Forbundet Arkitekter og Designere (FAOD)) for individual guidance.

Notice period

As an architect/designer, you are covered by the Salaried Employees Act which mandates the following employer notice periods, pursuant to Section 2, Subsection 2 of the Salaried Employees Act:

A notice period of:	When you receive the notice before the end of:
14 days	2½ months (if a probationary period has been agreed)
1 month	5 months
3 months	2 years and 9 months
4 months	5 years and 8 months
5 months	8 years and 7 months
6 months	subsequently.

The notice must be given in writing and contain a justification. Your unemployment fund will always require a written letter of notice and a justification in order to be able to determine if you were the reason for the termination. If you accept a shorter period of notice than that to which the Salaried Employees Act entitles you, there is a risk that your unemployment fund will impose a waiting period.

Is the termination justified?

Does the justification match the actual situation? If not, the termination may be unjustified and you may be entitled to compensation pursuant to Section 2 of the Salaried Employees Act. It is, however, a condition that you have been employed by the company for a minimum of one year prior to the termination.

Holiday

Vesting period = the calendar year

Holiday year = the following year during the period May 1st - April 30th

Take an example where you are earning holiday entitlement during the calendar year of 2018. The holiday earned, must be taken during the (holiday year) period, running from May 1st 2019 – April 30th 2020.

Holiday during the notice period

If you are required to take your holiday pursuant to the Holiday Act during a period of notice, notice of this must be given explicitly, either in the letter of termination or in the form of a separate communication after the termination.

You may be required to take your holiday during the notice period if the holiday and the Holiday Act notices can be covered by the notice period. The notice of the main holiday (3 weeks) must be given at least 3 months in advance and notice of the holiday remainder (2 weeks) must be given at least 1 month in advance.

If you have a 3 months' notice period, you can only be obliged to take your main holiday if your termination happens early enough prior to the last day of the month that your total notice period equals the holiday duration + 3 months or if the employer extends the notice period with the number of holiday days. If the employer extends the notice period, it must be extended to the end of a month.

If your notice period is longer than 3 months, you can be obliged to take all your holiday entitlement during the notice period.

Payment of holiday pay

The employer has to pay in holiday pay to FerieKonto for holiday earned that has not yet been taken. There may be holiday earned in the current holiday year, which you have not yet taken, and holiday in the next holiday year. Your last salary statement should include a holiday pay calculation.

When you are paid monthly, your employer has to pay in your holiday pay no later than on the 7th day of the 2nd month after your departure. If, e.g., you depart on 30 November, your holiday pay must be paid in no later than by 7 January. You can see the holiday funds via the [self-service](#) around 15 January.

The FerieKonto self-service can be found at www.atp.dk

Floating holidays

According to the collective agreement, the use of work-free days must be agreed. It is the view of FAOD, therefore, that work-free days can only be taken during the notice period if the parties agree to it. You should immediately contact the union if your employer is of a different opinion.

You will also be earning work-free days during the notice period. Work-free days paid up on termination will not be off-set against any unemployment benefit.

Lieu days

Hours remaining in the pool should be taken as lieu days to the extent possible before the departure date and any unused hours should be paid out.

During the notice period, both parties can require that between 1 and 75 hours are taken as lieu days with one month's notice. The employer can, with a 24 hours' notice, require that hours between 76 and up to and including 150 are taken as lieu days in the ratio of 1:1 or paid out at the ratio of 1:1½. The employee can give notice of lieu days with one month's notice with respect to daily operations. The notice of the employer takes precedence over that of the employee.

Overtime

Pursuant to the collective agreement, you are not obligated to work beyond normal working hours during the notice period.

Continuing education funds

You should request a statement of your continuing education funds at the time of receiving notice. Your employer is obligated to provide you with a statement of individual funds due not later than 14 days after the notice.

The continuing education funds must be used within 12 months of departure. This means that, in principle, a course must be concluded before the 12 months are up.

Once you have departed, the employer has no influence over how the funds are used, as long as the continuing education course can be approved by the tax authorities as continuing education. Any funds not used within the 12 months shall be paid into the common pool. In order to avoid misunderstandings, you should seek a promise in writing from your former employer regarding participation in a continuing education activity. Payment for the course should be made not later than 13 months after departure.

The funds may only be used via a new employer if they are a private, consulting architects' firm which is a member of DIO II. You can also use the funds while unemployed within the 12 months.

If your new employer is not a member of DIO II or if you start your own company, any unpaid continuing education funds must be paid out and taxed as salary, although there is a maximum of 2 years' of unpaid funds.

If you have agreed on advance use of continuing education funds with your employer and your balance is negative when you depart your position, the negative balance does not have to be paid by you but will be covered by pool funds.

Severance allowance

If you have been employed for 12 or 17 years, the Salaried Employees Act mandates a severance allowance of 1 respectively 3 months' salary, as per Section 2 (a). The qualifying length of service must have been attained at the time of departure. The salary is calculated including any allowance and with the addition of the employer's part of the pension contribution. The first DKK 8,000 is tax-free, the remainder is taxed as regular salary, pursuant to Section 7 (U) of the Assessment Act. The employee is entitled to the allowance irrespective of whether he/she obtains new employment immediately, is unemployed, or retires after the end of the notice period.

Released from notice or suspended

Release from notice

You are not entitled to being released from notice during a notice period, but if you are in a situation where there are no work assignments, you should attempt to negotiate a release.

If you are released from notice, you no longer have to go to work and you can start in a new job. In some cases, an off-set will be made against your salary. You are still bound by loyalty obligations during the release period and you are not allowed to take employment with a competing company.

In case of release from notice, any holiday supposed to have been taken during the notice period can be considered as having been taken. There are, however, specific rules in place in the situation where a new position is taken up during the notice period. If you are released from notice you should contact FAOD in order that we may assess your specific situation.

Suspension

Suspension is an alternative to release from notice. In this case, the employee does not come to work but is considered to be available and can be called in if there are assignments to work on. The on-call notice is typically agreed as one day. It is not possible to start in a new position or take holiday during suspension. Contact FAOD if you are suspended.

Job interviews

Section 16 of the Salaried Employees Act allows for paid time off for the purpose of job interviews. This presupposes that the interview is arranged at a time that causes the least possible inconvenience to the company.

You are, generally speaking, not entitled to paid time off for the purpose of preparing job applications, but if you should need, e.g., a morning at home for the purpose of activating your network, it is normally possible to agree this.

Career advice, feedback on applications and CV

The union offers feedback on applications and CV. You can also receive useful tips for your job search and job interviews. Send an email to sekr@faod.dk stating what you need.

Outplacement

Some companies offer job search assistance via a firm of consultants. If this is offered you should definitely accept it.

New job

If you get a new job and have to start before the end of your notice period, you can give notice (counter-notice) with one month's notice to the first date of a month. It will often be possible to agree early departure in exchange for an end to salary payments. Even if you should be taking lieu time and holiday during the last part of the notice period, you must not start in a new job, as you are still employed by the company.

Unemployed

If you do not start in a new job at the end of your notice period, you must sign up as unemployed on your first day of unemployment at the job centre (www.jobnet.dk) and with your unemployment fund. You can also do this electronically: If you are a member of Akademikernes unemployment fund, they can be contacted via www.akademikernes.dk or tel. +45 33 95 03 95 (Mon-Thur 9:00-16:00, Friday 9:00-15:00).

G-days

If you do not start in a new job at the end of your notice period, your employer has to pay for the first three days of unemployment. For a full-time insured person, the rate is DKK 827 per day before tax (2015).

You are only entitled to G-days if you belong to an unemployment fund.