



Economic and Organisational Dismissals

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Introduction

Employment relationships come to an end for a range of reasons. Some of these are related to the employee as an individual – one example is poor performance; other reasons, such as economic or organisational change are independent of the employee. Dismissal for economic or organisational reasons is variously described as reduction in force, redundancy or more euphemistically as downsizing, rightsizing, delayering or rationalising. Because the end result is that employees lose their livelihood without personal fault or responsibility, many countries provide a level of social protection. This guide explains the processes and matters to be considered if carrying out such dismissals in 38 countries.

The issues that arise on an economic or organisational dismissal, though not universal, have a high degree of consistency. Typically they include:

- How many people should lose their job?
- How are those who are to lose their job identified?
- Are any categories of employees (e.g. workplace representatives or pregnant women) protected against dismissal?
- Is there an expectation that attempts be made to find alternative work?
- Should an employer establish a social plan or other measures designed to reduce the impact of termination?

In many countries, there is a significant distinction between the rules applying on individual redundancies and on large-scale or collective redundancies. In this guide, we cover the rules on individual redundancies in section A and the rules on large-scale redundancies in section B. Rules relating to individual redundancies are determined on a country by country basis and vary substantially – though often covering the matters mentioned above. Although rules on large-scale redundancies also vary, there is greater consistency at least within the European Union. Under European Union law, there is an obligation to provide information to employee representatives and to consult those representatives with a view to reaching agreement on the approach to be taken and measures to avoid or reduce the impact of job-loss.

This guide outlines:

- the circumstances in which dismissals for economic or organisational reasons occur;
- the process to be followed;
- rules on selection;
- the costs of headcount reduction;
- rules on large-scale dismissals;
- when consultation is required;
- legal risks and likely challenges.


For further information on the law in any given state, please contact the relevant Ius Laboris member firm listed above or:

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Individual dismissals can be made for economic or organisational reasons, with no special administrative procedure other than the required notice. The employer should be able to provide evidence of economic or organisational need. If it fails to provide evidence of this in court it will be required to pay the full statutory severance.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

If the organisation intends to carry out dismissals for economic reasons, those with shorter service should be selected first. If employees have the same seniority, an employee with access to family allowances may be excluded from selection.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Individuals do not need to be consulted. Unions also do not need to be consulted. Some collective bargaining agreements contain a provision that the organisation must notify the union before the dismissal, but in no case is consent required. No consultation is required for individual economic dismissals.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employment law provides for statutory severance pay for dismissals. Generally, one month's salary per year of service is payable. A period of more than three months counts as a full year.

A payment because of an economic or organisational dismissal or other set indemnity

If the dismissal is for an economic reason, the organisation could offer payment of reduced severance (i.e. 50% of the statutory severance). However, the courts usually consider that the employer must pay full severance, as the employer's business risks should not be allowed to affect the employee.

Compensation related to loss

There is no compensation related to loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

As part of the crisis procedure or bargaining with the union, it is common practice to offer severance above the statutory requirement. Other benefits are also offered, for example, an extension of medical insurance, outplacement or the employee may keep a work tool. These types of offers are customary in individual dismissals.

4. How long does the process take?

For individual dismissals there is no process at all, but simply the formality of notifying the dismissal, which can be done in one day.

5. Are any categories of employees entitled to special protection?

There are employees who must not be included in a redundancy process unless there is a site closure, when the protections cannot be enforced. Union representatives elected by the employees, union officers, pregnant women or recent mothers and recently married women are protected.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

For a collective dismissal for economic reasons a crisis procedure must be initiated under law. A crisis procedure must be initiated and reasons given for the terminations. If the organisation follows the crisis procedure and the economic reason is proved, it must pay severance of not less than 50% of the statutory severance and give advance notice. It is common practice for the employer to pay at least the full severance pay.

The rules on large scale dismissals apply where more than 10 or 15% of the workforce is affected, depending on the size of the organisation:

- 15% if the organisation has fewer than 400 employees; and
- 10% if the organisation has more than 400 employees.

The rules apply if the organisation claims that the reorganisation is for economic reasons that affect the level of employment.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

There is no consultation but the employer must inform the Ministry of Labour that a crisis procedure is being initiated. The Ministry of Labour will then ask the union to respond and will provide a copy of the information provided by the employer. Within ten working days the Ministry of Labour will call mediation hearings.

7.2 What information must be disclosed to employees and/or their representatives?

The organisation must present the Ministry of Labour and the union with the economic results and information for the previous three financial years. This must include an explanation of the reasoning that led to the restructuring process

7.3 When and how should consultation take place?

The process starts when the organisation gives formal notice to the Ministry of Labour.

7.4 What must be covered in the consultation?

The union is likely to provide arguments to prevent the dismissals or, if dismissals are unavoidable, they will bargain for increased severance pay.

8. Is there a requirement to notify the government or any third party?

The Ministry of Labour must be informed at the beginning of the process.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The employer must select employees with less seniority first within the same area of specialisation. If employees have the same level of seniority, an employee with access to family allowances may be excluded from selection.

10. How long does the large-scale process take?

By law, the crisis procedure should take not more than 15 working days. But the timeframe provided by law is not fully applied by the Ministry of Labour in practice. Therefore, the procedure could last a month or longer under certain circumstances.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

The unions may retaliate and try to get the redundancies suspended. They may make arguments about the social responsibility of the employer or the idea that the organisation has made money in the past. If the business is not going as expected it is not the employees who should have to pay for this with the loss of their jobs. The authorities, including the Ministry of Labour will try to convince the organisation to adopt a strategy of 'wait and see', sometimes offering subsidies.

Once the crisis procedure is finalised and notice of the dismissals given, the employees will be able to bring a claim before the labour courts. If the organisation has paid less than the statutory severance, the courts are likely to favour the employee.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

There is no compensation available for loss.

12.2 Can they suspend or stop the process?

The court cannot stop the reorganisation process. Dismissals are permitted by law and protection is only available in special situations. However, the court can decide if the severance has been correctly calculated and paid.

12.3 Can they order reinstatement?

Reinstatement is only possible if the dismissal selection process was discriminatory. Formal union representatives and pregnant women are protected against dismissal by law, for

example, but there may be other cases of discrimination, such as religion or race, which the court will determine on the facts

Austria



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where a shortage of orders, decline in demand for business products and services or credit difficulties of the employer inevitably affect the organisation and cause the dismissal of employees, and no less restrictive measures are available.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

In principle, ordinary dismissals do not require a reason or the use of particular selection criteria. However, for dismissals for economic or organisational reasons, the employees least socially affected should be dismissed first. If the employer has given notice to more socially-affected employees, those employees may claim 'socially unjustified dismissal' and ask to be reinstated. 'Socially unjustified dismissal' means the dismissal seriously affects the employee's interests. The main consideration is the likelihood of the employee finding a new position within a reasonable timeframe. Employees can ask to be compared with a named employee who has not been dismissed. However such requests are rare.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

An ordinary or summary dismissal requires the involvement of the works council, if elected. For an ordinary dismissal the works council must be notified one week before serving notice, otherwise the dismissal is void. For summary dismissal notice must be given within three working days of the dismissal.

The employer need only notify the works council about planned notice to terminate an employee. The works council has one week to consent, disagree or give no comment on the termination. The works council can demand a consultation. In which case the employer must discuss the matter with the works council.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

An ordinary dismissal is subject to a notice period. Employees must work out the notice period or be paid in lieu. The minimum period of notice is six weeks and increases with length of service, for example, to two months after two years of working.

A payment because of an economic or organisational dismissal or other set indemnity

There is no specific payment due for economic or organisational dismissals. Organisational dismissals are carried out by the employer and can trigger severance pay. For ordinary dismissals, employees are entitled to mandatory severance pay if the employment commenced before 1 January 2003. For employees who started employment after this time, the employer must pay 1.53% of the monthly gross salary into a severance fund. This obligation ends upon

termination and the employee is only entitled to payments or further accrual against the severance fund.

Compensation related to loss

There is no automatic right to compensation for loss. However, the employer makes a payment in lieu of notice if either an instant dismissal is unfair or notice has not been observed by the employer. Court cases often end by mutual agreement with a payment for the termination. The amount depends on what is agreed.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Voluntary severance is usually only offered if the employee is likely to successfully challenge the termination in court. The amount of the severance depends on the circumstances of the case.

4. How long does the process take?

There are no specific timeframes for organisational dismissals. Notice periods can vary according to the number of years of service and must be observed.

5. Are any categories of employees entitled to special protection?

Protected groups include disabled employees, members of the works council, employees on compassionate leave, pregnant employees, employees on parental leave or under a parental part-time regime, apprentices and employees on compulsory military or community service. Consent must be obtained from the labour court or an administrative authority to terminate these employees.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules that apply to large scale dismissals.

The works council can request a social plan if all or most of the employees are negatively affected by the reorganisation and the establishment employs more than 20 employees.

In some circumstances, public authorities must be notified. The relevant public authorities must be notified if the employer wishes to dismiss, within a 30-day period:

- at least five employees in establishments with more than 20 and fewer than 100 employees;
- at least 5% of employees in establishments with 100 to 600 employees;
- at least 30 employees in establishments with more than 600 employees; and
- at least five employees aged 50 or over for establishments of any size.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must consult when large-scale economic or organisational dismissals are proposed.

There is an obligation to consult with the works council, rather than on an individual level. If all or almost all employees are negatively affected by the reorganisation the works council can request a social plan and can also call in an administrative tribunal ('Schlichtungsstelle') in order to compel the employer to produce a social plan.

7.2 What information must be disclosed to employees and/or their representatives?

Generally, if a works council exists, it must be informed of issues affecting the economic position and development of the organisation and any measures taken to increase efficiency. This should be done at regular meetings.

In the case of collective dismissals, information to be provided to the works council in writing includes:

- the reasons for redundancies;
- the number and function of employees to be made redundant and those employees' qualifications;
- the length of service or means of selection;
- the number and function of all employees;
- the timeframe for the proposed redundancies and the proposed measures to mitigate the effect on employees.

7.3 When and how should consultation take place?

The consultation should take place in time for the works council to evaluate the consequences of the planned measures and make a statement. Confirmation of consultation with the works council must be presented to the Public Employment Service together with notification of the planned redundancies and so consultation must take place before the notification.

7.4 What must be covered in the consultation?

The works council must be informed and consulted on the business changes the organisation is considering implementing, including relocation.

8. Is there a requirement to notify the government or any third party?

The employer must notify the Public Employment Service ('Arbeitsmarktservice', 'AMS') if it wishes to dismiss a certain number of employees within a period of 30 days. Terminations can be issued after a 30-day waiting period.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Generally large-scale dismissals do not require the use of particular selection criteria. However, as in the case of an ordinary dismissal, the employees least socially affected should be dismissed first in order to avoid claims based on 'socially unjustified dismissal'.

10. How long does the large-scale process take?

How long the process takes depends on whether or not a social plan is negotiated. It also depends on the number of employees to be made redundant. Therefore the duration of the process can vary between a few weeks and a few months.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

In general, the works council or the employee may contest the dismissal by appealing to the labour court.

If the works council has objected to the dismissal it may appeal against it within one week on the request of the employee concerned. If the works council does not comply with the request, the employee may file an action within two weeks.

If the works council does not comment on the dismissal within the notification period, the employee may file an action within two weeks of receipt of the notice of dismissal. If the works council agrees to the dismissal, it cannot be challenged on the grounds of social unfairness, only on grounds of unlawful motive. The dismissal may be set aside by the court if it was based on an unlawful motive or the dismissal is socially unjustified (i.e. the dismissal seriously affects the employees' interests).

12. What can the court or tribunal order?

12.1 Can they order compensation?

There is no automatic right to compensation for loss. However, the employer makes a payment in lieu of notice if an instant dismissal is unfair or notice has not been observed by the employer. Court cases often end by mutual agreement with a payment in return for termination. The amount depends on what is agreed.

12.2 Can they suspend or stop the process?

The court cannot make an order to stop dismissals.

12.3 Can they order reinstatement?

If the dismissal is rejected by a court, the employment contract continues and the employer must pay the employee's salary for the duration of the court process.

Although an appeal may be brought against the judgment, the employment agreement remains effective until a final decision has been taken.

Belgium



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A ECONOMIC AND ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Belgian law does not limit the circumstances in which employees can be dismissed, but dismissals must not be 'manifestly unreasonable'. Dismissal that is connected to an organisational need can avoid this. Even if an organisation is profitable, it can dismiss employees for economic or organisational reasons, provided management believes this is necessary for it to remain competitive.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The works council is able to determine the selection criteria to be used for dismissals for economic or technical reasons, but in practice it does not often exercise this power. In the absence of a decision of the works council, the employer is free to determine the selection criteria, provided the criteria are not discriminatory. Typical selection criteria include the employee's qualifications, performance ratings and years of service.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Consultation is not required for individual economic dismissals unless required by a collective bargaining agreement.

The works council must be consulted if dismissals have a substantial impact on the organisation of work, but this is rarely the case for individual dismissals.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work the notice period or be paid in lieu. For contracts on or after 1 January 2014, notice depends on length of service. This varies from two weeks to more than 62 weeks after 20 years of service.

For contracts before 1 January 2014, the notice period depends on various factors. See www.dismissal.be.

A payment because of an economic or organisational dismissal or other set indemnity

There is no entitlement to a payment for an economic dismissal unless it is part of a collective dismissal or the closure of the organisation or division. In certain industries and organisations, collective bargaining agreements provide for employee protection. Failure to comply with these agreements may result in additional liability for payments.

Compensation related to loss

There is no compensation for loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not usual to offer additional financial compensation.

If protected employees must be dismissed, the employer must negotiate with the individuals concerned or with the unions. In those negotiations, an employer will often offer substantially more than the minimum notice period or pay in lieu of notice.

4. How long does the process take?

Since there is no requirement to consult individual employees or representatives on individual dismissals for economic or organisational reasons, notice of the dismissals can be given immediately.

5. Are any categories of employees entitled to special protection?

There are over 20 categories of protected employees, including employee representatives, candidates for social elections, trade union delegates, pregnant women, employees on maternity or parental leave, career breaks or educational leave and employees claiming harassment or discrimination.

Some employees may only be dismissed following external approval. In other cases, the employer need only prove the dismissal is unrelated to the protection.

B LARGE-SCALE ECONOMIC AND ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply in the case of large-scale dismissals.

An employer must consult with the appropriate employee representatives and must also notify the relevant government bodies. The employer must establish an 'employment cell' to assist the dismissed employees in finding new employment. The rules apply to multiple dismissals within 60 days as follows:

- organisation with 20 to 100 employees: ten dismissals;
- organisation with 100 to 300 employees: 10% of the workforce;
- organisation with more than 300 employees: 30 dismissals.

The exact threshold depends on the organisation's size, assessed firstly by reference to the 'technical unit of operation' (i.e. an entity based on economic and social coherence) and secondly by reference to any divisions within the organisation. For example, in an organisation with 500 employees, ten dismissals will qualify as a collective dismissal if they all take place in a division with less than 100 employees. Note that slightly different thresholds apply for specific obligations (such as the obligation to set up an 'employment cell').

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must consult when large-scale economic or organisational dismissals are proposed. Consultation takes place with one of the following bodies in descending order:

- works council;

- trade union delegation;
- health and safety committee (together with individual employees);
- individual employees.

7.2 What information must be disclosed to employees and/or their representatives?

An employer must provide the following information in writing to the representatives:

- the reason for the intended dismissals;
- the numbers and categories of the employees it usually employs;
- the numbers and categories of the employees it proposes to dismiss;
- the proposed method of selecting the employees who may be dismissed;
- the proposed period over which the dismissals are to take effect;
- the proposed method of calculating the amount of any possible redundancy payments, other than statutory redundancy pay.

7.3 When and how should consultation take place?

The consultation must take place 'in good time', that is before any final decision is taken and, therefore, before the implementation of the restructuring has started.

The employee representatives must be allowed to ask all relevant questions, to suggest alternatives and to give feedback on the proposals of management. The employee representatives' input must be considered when taking a final decision on the projected dismissals.

7.4 What must be covered in the consultation?

The process must include consultation with the appropriate representatives about ways of:

- avoiding the dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of any dismissals.

8. Is there a requirement to notify the government or any third party?

Notification must be sent, after the initial announcement of the proposed dismissals, to the Regional Unemployment Agency and the Federal Public Service Employment. Another notification must follow after the final decision. If the dismissals are the result of a closure, the Regional and Federal Minister of Work and the Regional Minister of Economy must also be notified.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The works council is able to determine the selection criteria to be used for dismissals for economic or technical reasons, but in practice, it does not often exercise this power. In the absence of a decision of the works council, the employer is free to determine the selection criteria, provided the criteria are not discriminatory. Typical selection criteria include the employee's qualifications, performance ratings and length of service.

10. How long does the large-scale process take?

The law does not define the length of a consultation period, but in 2014, consultations on dismissals took an average of 72 days. The employer then communicates the decision and a 30-day period starts to run during which no dismissals can take place. This period is often used to negotiate a social plan. The entire process (consultation plus negotiation) therefore usually lasts three to five months.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic and organisational reasons?

In a collective dismissal, employees can challenge compliance with the information and consultation procedure.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The court can grant compensation for any proven harm suffered by employees as a result of the employer's non-compliance with the information and consultation procedure. Such claims are rare and courts seldom grant more than EUR 5,000 per employee.

12.2 Can they suspend or stop the process?

The court can make an order stopping the dismissals, although this happens rarely. If the employees or unions believe that the employer has not sufficiently answered questions during the information and consultation procedure, they may ask the court to order that consultation continue until the missing information has been made available and been discussed.

12.3 Can they order reinstatement?

In specific circumstances the court may order reinstatement. However, although the law which allows for this has existed for more than 15 years, reinstatement has never been ordered in practice.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

An employer proceeding with a collective dismissal of at least 10% of its staff must establish an 'employment cell', with at least one union and with the Regional Employment Agency. The employment cell will assist employees in their search for a new job by choosing an outplacement firm. Employees must participate in the employment cell for three months if under 45 years old or six months if older than 45. The employees continue to receive salary during this period, but these payments will be deducted from pay in lieu of notice.

Brazil 

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Brazilian employment law permits termination at will. Therefore, economic or organisational circumstances are not necessary to dismiss employees.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no statutory rules governing selection criteria. The Federal Constitution prohibits discrimination based on gender, age or religion. Therefore, the selection criteria must not result in discrimination. An employer should use criteria that take into account length of service with the organisation. Therefore, decisions to dismiss newer employees are common, though not a legal requirement. The employer should also check whether the collective bargaining arrangement applicable to the employees sets out criteria for dismissals, but this is rare.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There is no requirement to consult individuals upon dismissal.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees are entitled to a minimum of 30 days' pay plus three days for each year after the first (i.e. for termination without cause) capped at 90 days.

A payment because of an economic or organisational dismissal or other set indemnity

If terminated without cause, an employee is entitled to receive at a minimum:

- an indemnity equal to 40% of the balance remaining in his or her Guaranteed Severance Fund account which is comprised of deposits made on a monthly basis equal to 8% of the monthly salary during the term of the employment;
- accrued and overdue annual leave and annual leave bonus payments; and
- accrued Christmas bonus.

Compensation related to loss

There is no compensation for loss. It is possible, however, that collective bargaining arrangements provide for additional payments to employees terminated close to retirement.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not common to offer more than the minimum compensation to employees, except to higher level employees who may have specific contractual termination provisions for additional payments. Organisations that offer additional benefits usually offer an extension of health benefits.

4. How long does the process take?

Terminations without cause can be implemented immediately. The process starts with the delivery of notice to the employee. The organisation must then carry out a required medical examination and pay severance-related amounts within ten days of delivery of the termination notice.

5. Are any categories of employees entitled to special protection?

Employees entitled to special protection include:

- pregnant employees;
- members of the internal safety and protection committee;
- union directors; and
- employees who return to work after a work-related accident or disease.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are no statutory provisions. However, court precedents have set limits. Large-scale terminations should be based on good reasons (i.e. economic or organisational). There are court precedents requiring the employer to notify the employees' union and come up with measures to mitigate the social impact of the terminations. There are no statutory rules about large-scale dismissals. However, the courts have taken the approach that employers should take certain steps in relation to large scale dismissals and therefore employers should consider whether they are dismissing a large number of employees or a large percentage of the total number of employees in the organisation.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation is not mandatory but it is generally agreed that the employer should consult with the union on large-scale terminations to mitigate the social impact. While the unions will not have the power to stop the dismissals they can hold them back until there is an agreement on special compensation (or until the courts have ruled on them if there is no agreement). In recent cases involving large-scale terminations carried out without prior consultation with unions, the courts have ruled that the terminations were unfair and have imposed restrictions on the employers' right to terminate at will.

7.2 What information must be disclosed to employees and/or their representatives?

The information that should be disclosed is the decision to terminate, the reason for the decision and the mitigating measures the employer contemplates implementing.

7.3 When and how should consultation take place?

Consultation should take place prior to implementing the dismissals.

7.4 What must be covered in the consultation?

The consultation should cover the number of employees being terminated, the reasons and any mitigating measures, such as extension of health benefits and provision of food parcels. The parties may discuss 'adequate benefits' for the terminated employees. There is nothing in Brazilian law defining adequate benefits so this will be done by agreement between the union and employer.

8. Is there a requirement to notify the government or any third party?

There is no statutory obligation to notify any third party.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no rules or criteria about who may be selected for large-scale dismissals. However, it is important to identify the categories of employees who are entitled to special protection in law.

10. How long does the large-scale process take?

How long the process takes depends on the agreement between the employer and the union on the mitigating measures and the number of employees being dismissed. It can be successfully implemented in a matter of weeks if the negotiations with the union are successful and the employees are terminated at the same time.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Depending on how the dismissal is implemented and whether it includes employees who enjoy temporary employment protection or a large number of employees, the following challenges can be made:

- Individual employees enjoying employment guarantees can seek reinstatement in court through injunctions that can be granted immediately and ex parte (i.e. without hearing the defendant).
- In the case of a large-scale termination, the employees' union or individual employees may seek an injunction to stop the terminations until mitigating measures are set out and implemented. This causes delays in the process and forces the payment of salary until the termination is implemented.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If the employer and the union do not reach a mutual agreement, then either party may take the case to the courts and ask the court to order reasonable compensation. There is no compensation for loss, but collective bargaining arrangements may provide for additional severance, including to employees terminated close to retirement.

12.2 Can they suspend or stop the process?

The court can order dismissals to be stopped if it considers that employees have not been compensated for the implementation of the dismissals or some of the employees enjoy legal employment protection against termination.

12.3 Can they order reinstatement?

An order for reinstatement can be made if the employees being terminated are protected or, in a large-scale termination, until the parties negotiate and implement mitigating measures that are accepted by the court.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made as follows:

- where the basis of the employment contract has substantially changed (e.g. economic downturn), which frustrates the contract, and no agreement is reached on modification;
- insolvency;
- where the employer's business licence is revoked, the business closes down; or
- liquidation.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no legal rules about selection criteria for economic dismissals. However, the court may ask the employer to prove it has not based its decision on discriminatory or unreasonable selection criteria.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer is required to consult individuals if the contract has been frustrated and there is no agreement on how to modify it. However, there is no consultation required in the case of insolvency or closure. Consultation would normally cover the possibility of modifying the original employment contract and the details of such modification (e.g. adjustment of the position).

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The employer must notify the employee in writing of its intention to terminate the employment 30 days in advance or pay the employee an extra month's salary in lieu of notice.

A payment because of an economic or organisational dismissal or other set indemnity

Employees are entitled to statutory severance pay, calculated based on length of service (i.e. one month's salary for one year of service). If the length of service is more than six months but less than one year, it will count as one year. If the service is less than six months, it will count as half a year.

The statutory severance is capped at three times the local average monthly salary for the previous year and the number of years taken into account must not exceed 12.

Compensation related to loss

If the court finds the dismissal is illegal, the employee can request reinstatement or damages calculated at twice the rate for calculation of statutory severance pay.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not uncommon for employers to offer additional severance (e.g. one to two months' salary) to give employees a greater incentive to terminate employment by mutual agreement. Normally, termination by mutual agreement saves employers the risk of potential labour disputes that may arise from the termination.

4. How long does the process take?

The timeframe for completing the whole process is typically one to two months, but this varies on a case-by-case basis.

5. Are any categories of employees entitled to special protection?

An employee is protected if he or she:

- is having or needs to have mandatory medical examinations;
- cannot work following occupational disease or work-related injury;
- is in a prescribed medical-care period;
- is pregnant or is otherwise affected by childbirth; or
- has worked for the employer 15 years and is less than five years from retirement.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals.

An employer must consult with the labour union or all of its employees and must also provide a dismissal plan to the local labour authority. The rules apply where more than 20 employees or 10% or more of the total workforce will be dismissed and where:

- the employer is restructuring under insolvency laws;
- the employer experiences serious difficulties in production or business operations;
- the employer changes production, introduces a major technological innovation or revises its business methods and, after altering employment contracts, still needs to reduce its workforce; or
- there is another major change in economic circumstances beyond the employer's control (e.g. economic downturn), so frustrating the contracts.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must consult when large-scale economic or organisational dismissals are proposed. An employer must explain the circumstances to its labour union or all of its employees 30 days in advance and consider any responses.

7.2 What information must be disclosed to employees and/or their representatives?

No specific information is required to be disclosed. In practice, the information to be disclosed includes the reasons for the dismissal (e.g. operational difficulties), a list of employees to be dismissed and a schedule of employees to be dismissed, plus the compensation package.

7.3 When and how should consultation take place?

The employer must give an explanation of the circumstances to the labour union or all the employees 30 days in advance and seek comments on the employee dismissal plan. The employer must then consider revising the dismissal plan, taking into consideration the employees' and/or the union's comments.

7.4 What must be covered in the consultation?

There is no statutory requirement for what information needs to be covered in the consultation.

8. Is there a requirement to notify the government or any third party?

The employer must provide the employee dismissal plan to the local labour authority for filing and take the authority's comments into consideration. Generally, the successful completion of this filing procedure is subject to the authority being satisfied with the plan.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

When making collective dismissals, an employer must give preference to retaining employees:

- with comparatively longer fixed-term contracts;
- with indefinite term contracts; or
- employees who are the sole wage earners and are supporting an elderly person or a minor.

10. How long does the large-scale process take?

The large-scale redundancy process usually takes two to three months, subject mainly to the local labour authority's approval of the dismissal plan submitted by the employer.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

It is not uncommon for employers to be challenged for failure to comply with the procedural requirements for individual and collective dismissals, such as consultation with employees and filing a dismissal plan with the local labour authority. If such challenges can be substantiated, the dismissals are considered unlawful and invalid. Employees may request reinstatement or damages calculated at twice the rate of the statutory severance pay.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

If the court finds the dismissal is illegal, the employee can request reinstatement or damages calculated at twice the rate for calculation of statutory severance pay.

12.2 Can they suspend or stop the process?

The court cannot make an order stopping dismissals or reorganisation.

12.3 Can they order reinstatement?

The court can order reinstatement, but this may not be likely in relation to certain jobs, for example, unique, high-level positions in an organisation.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

If the employer wishes to hire any employee again within six months of a collective dismissal, it must notify the dismissed employees and rehire those employees.

Colombia



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Under Colombian labour law, economic or organisational reasons do not constitute special or exonerating circumstances for individual terminations. These dismissals will be taken as unilateral unjustified terminations and statutory severance payments must be made.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The law does not provide specific rules on selection criteria. However, the selection process must use objective criteria and avoid discriminatory treatment.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There is no obligation to consult in relation to individual dismissals for economic reasons, unless an applicable collective bargaining agreement states otherwise.

If applicable, the collective bargaining agreement will prescribe the scope of consultation.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Colombian labour law sets out the legal severance pay for unilateral termination. This varies depending on the worker's salary and length of service. The calculation also depends on the nature of the agreement (i.e. fixed-term, the duration of the task or indefinite-term).

A payment because of an economic or organisational dismissal or other set indemnity

For individual economic or organisational dismissals the organisation must make mandatory unilateral termination payments, depending on the nature of the agreement. For fixed-term contracts, the salary for the remaining term must be paid. For indefinite-term contracts, employees are entitled to payments based on their length of service and average earnings, beginning at 20 days' pay per year. Employees with more than ten years' service as at 1 January 1991 cannot be terminated and are entitled to reinstatement unless a court decides otherwise.

Compensation related to loss

There is no compensation for loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

In addition to legal severance, the organisation may pay an amount equivalent to the last salary or agree certain social security benefits. These offers are typically linked to signing a formal agreement to avoid future claims. Amounts are negotiated with employees, but consideration is often given to factors such as seniority and legal protection.

4. How long does the process take?

Dismissals can be effective immediately or with eight days' notice. If the employer requests authorisation from the Ministry of Labour, the process can take three months to a year. If the organisation negotiates with employees, the dismissal could take effect after between one week and three months, depending on the number of employees.

5. Are any categories of employees entitled to special protection?

Special protection applies to:

- pregnant women or those on maternity leave;
- certain union representatives;
- disabled employees;
- employees who have worked for at least ten years from 1 January 1991 and have not waived, in writing, the right to reinstatement.

These employees cannot be dismissed without special authorisation from the labour authority or the courts.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. If the dismissal is collective or is a business closure, the organisation must file an application for authorisation before the Ministry of Labour. Otherwise, dismissals will be considered void and will not be enforceable.

Authorisation will be granted by the Ministry of Labour in the following cases:

- where the organisation needs, for example, to introduce modern systems to increase productivity or quality, or needs to improve equipment;
- circumstances that put the organisation at a competitive disadvantage with similar organisations;
- where there is a risk of or actual suspension of payments;
- where, for technical or economic reasons, the organisation does not have the raw materials necessary to operate.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

The employer does not need to consult employees. As a requirement to proceed it must obtain the Ministry of Labour's authorisation.

Consultations are not legally required and they only operate for collective dismissals, or where the collective bargaining agreement so requires.

7.2 What information must be disclosed to employees and/or their representatives?

There is no legal requirement to disclose information. However, if the collective bargaining agreement provides for disclosure, it must indicate the extent of the information to be disclosed.

7.3 When and how should consultation take place?

Since there is no set process, the applicable collective bargaining agreement will regulate the consultation procedure.

7.4 What must be covered in the consultation?

There are no rules about what a consultation should cover, but the applicable collective bargaining agreement may make requirements.

8. Is there a requirement to notify the government or any third party?

There is a requirement to notify the Ministry of Labour about large-scale dismissals. Without its authorisation a large-scale dismissal will not be valid.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The law does not provide specific rules on selection criteria. However, the selection process must use objective criteria and avoid discriminatory treatment.

10. How long does the large-scale process take?

The authorisation stage typically takes between six months and a year and so it should be expected that the redundancy process will take at least that long.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

For individual dismissals for economic or organisational reasons, legal challenges or claims will only proceed if the organisation does not fulfil its legal obligations concerning severance payments or if employees with special protection are dismissed without prior authorisation. If so, the employee will be reinstated and will be entitled to receive salary and benefits for the period between dismissal and reinstatement.

If the dismissal is deemed collective or a business closure and it was carried out without prior authorisation from the Ministry of Labour, the dismissals will not be enforceable and the organisation will most probably be forced to reinstate the employees. The employees will be entitled to receive salary and benefits even if no services have actually been rendered.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

There is no compensation for loss.

12.2 Can they suspend or stop the process?

The Labour Courts or the Ministry of Labour are entitled to intervene if the dismissals were carried out without authorisation or if employees with special protection were dismissed.

12.3 Can they order reinstatement?


The court can order reinstatement. This often happens, especially in cases where employees with special protection are dismissed.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

In terms of collective redundancy, before requesting authorisation from the Ministry of Labour, the employer should consider implementing a voluntary redundancy programme, through which employment contracts will be terminated with the mutual consent of the employees. The organisation may incentivise its employees by offering monetary compensation over the legal minimum.

Cyprus



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

The following can justify dismissals for economic or organisational reasons:

- closure or intended closure;
- change in work location;
- reduced business need, such as changes in production methods and structural changes;
- changes in the required expertise of employees;
- abolition of departments;
- difficulties with market share or credit;
- reduction in turnover.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

No special criteria apply during the selection process but the employer should take into consideration the needs of the business, the personal circumstances of the employees and whether any affected employees can be employed in similar positions within the business.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

If the affected employee is a trade union member and there is a collective agreement in place regulating the matter, the employee representatives must be consulted.

Consultation will cover any topic provided for by the collective agreement. The following may also be covered:

- ways to avoid the redundancy or reduce the number of employees affected; and
- ways to mitigate the consequences, usually by taking social measures with the purpose of rehiring or retraining the employees made redundant.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The statutory notice period varies according to the employee's length of service, from one to eight weeks. The notice period can be extended by agreement. The employer can require the employee to accept payment in lieu of notice, which should cover the employee's salary entitlement, prorated for the period of the notice.

A payment because of an economic or organisational dismissal or other set indemnity

Termination payments for redundancy are regulated by law and are calculated based on length of service as follows:

- two weeks' wages for each year of service up to four years;
- two and a half weeks' wages for each year of service from five to ten years;
- three weeks' wages for each year of service from 11 to 15 years;

- three and a half weeks' wages for each year of service from 16 to 20 years; and
- four weeks' wages for each year of service beyond 20 years.

Compensation related to loss

Any additional compensation in excess of that set by law should be part of a claim before the employment court. Any employee who makes an application for payment from the Redundancy Fund and is rejected can claim compensation for unlawful dismissal and loss of career.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

If the dismissal meets the redundancy requirements, the employer does not have to offer additional amounts. However, employers may make an *ex gratia* payment to recognise the employee's service.

4. How long does the process take?

There is no typical timeframe for the dismissal process. An individual dismissal can be completed by delivering a termination letter and can therefore take effect immediately, depending on the circumstances of the case. The length of the dismissal will depend on the reason for the dismissal.

5. Are any categories of employees entitled to special protection?

A pregnant employee or employee on maternity leave cannot be dismissed. Further, by law, an employee who is absent from work due to incapacity cannot be given notice of dismissal until at least six months have passed from the first day of absence.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. The employer must give notice to the Minister of Labour and Social Insurance of any proposed redundancy at least one month before the intended date of termination. It must also negotiate with the employee representatives on specific issues.

Collective redundancies are terminations for reasons not related to the individual employee, within a period of 30 days, involving a certain number of people as follows:

- a minimum of ten people in businesses employing 20-100 employees;
- a minimum of 10% of the total number of employees in businesses employing 100-300 employees;
- a minimum of 30 people in businesses employing at least 300 employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation is with the employee representatives.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must provide all relevant information, including:

- the reasons, the number and categories of affected and existing employees;
- the timeframes for the redundancies;
- the selection criteria;
- the method of calculating any potential payments, other than statutory payments.

7.3 When and how should consultation take place?

Consultation should take place 30 days prior to the dismissals.

7.4 What must be covered in the consultation?

For collective redundancies the employer must enter into timely negotiations with employee representatives to reach an agreement on ways to:

- avoid the redundancies or reduce the number of employees affected; and
- mitigate the consequences, usually by taking social measures to rehire or retrain redundant employees.

8. Is there a requirement to notify the government or any third party?

Employers must give notice to the Minister of Labour and Social Insurance of proposed redundancies at least one month before the intended date of termination.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no rules or criteria about who should be selected for large-scale dismissals. However, some categories of employees are entitled to special protection in employment generally.

10. How long does the large-scale process take?

A large-scale dismissal will typically take 30 days.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

In the event that a dismissal does not constitute redundancy or collective redundancy and the employee is not eligible for a redundancy payment from the Redundancy Fund, he or she may file a claim for unfair dismissal before the employment court.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

Any employee who makes an application to the Redundancy Fund and is rejected can claim compensation for unlawful dismissal and loss of career.

12.2 Can they suspend or stop the process?

The employment court cannot stop dismissals from going ahead, but may award compensation to an employee for unfair dismissal and additional compensation, including for loss of career, in

the event that it concludes that the termination of employment does not fall within the ambit of redundancy or collective redundancy.

12.3 Can they order reinstatement?

The employment court can order reinstatement, but this rarely happens in practice.

D OTHER IMPORTANT POINTS


13. Is there anything else we need to consider?

There are certain best practices that the employer should observe before deciding to dismiss an employee. The employer should:

- try to obtain consent and make its decisions in consultation with the employee;
- follow all legal provisions;
- inform the employee of the dismissal as soon as possible;
- follow all internal procedures;
- if possible, offer retraining or help in obtaining employment elsewhere; and
- pay all benefits and entitlements as soon as possible after termination.

After an employee has been made redundant, he or she may file an application with the Redundancy Fund to receive compensation for redundancy. Usually it takes approximately 18 months for the Redundancy Fund to review the application. The only restriction on employers is that if they want to hire a new employee within eight months for a position that any of the redundant employees could occupy, the employer must give priority to the redundant employees.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where a business is closed or relocated. Redundancies can be made at the employer's discretion based on organisational changes including:

- changes to employer's activities;
- changes to technical equipment of the employer;
- reduction of staff to increase work efficiency.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no rules about choosing employees. The decision is at the employer's sole discretion. However, the criteria for selection must not be discriminatory.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Generally, employee representatives should be consulted about dismissals, but a lack of consultation does not make a dismissal invalid.

However, in the case of dismissal of a member of the trade union during his or her term of office and one year afterwards, the trade union must give its consent to the dismissal, otherwise the dismissal is invalid. If there is no trade union operating at the employer no consultation is required.

Within the consultation process the employer should meet the employee representatives with the aim of reaching mutual agreement. However, there are no consequences if no agreement is reached. In the course of consultation, the employee representatives are entitled to express their views and be provided with reasoned answers.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The statutory notice period is two months and may not be substituted for payment in lieu. However, if the employer does not want the employee to work during the notice period it may send him or her on garden leave.

A payment because of an economic or organisational dismissal or other set indemnity

Employees dismissed for organisational reasons are entitled to severance pay amounting to one to three times the employee's average earnings, depending on length of service. Employees employed for less than one year receive the minimum payment. Employees employed for more than two years receive three times the monthly average earnings.

Compensation related to loss

Employees may claim compensation related to loss only if the dismissal is invalid or the employer has breached its legal obligations towards the employee and this has caused a loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

If the employer wants to agree the employee's termination of employment, it will usually offer higher severance pay, typically five or six times the salary. By contrast, if notice of termination is delivered to an employee, any increase in severance pay is rare.

4. How long does the process take?

Assuming the large-scale dismissal rules need not be observed and consent of the trade union to the dismissal need not be obtained, the consultation will take only few days, usually no more than a week. There will then be a two-month notice period from the first day of the month following delivery of the notice.

5. Are any categories of employees entitled to special protection?

Except in specific circumstances, employers cannot serve notice on employees who:

- are sick;
- are pregnant or on maternity or parental leave;
- have been called up for military service;
- are on long-term unpaid leave in order to hold a public office;
- perform night work when temporarily unfit for night work.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals.

An employer must inform and consult employee representatives on certain matters. If there are no employee representatives, the employer must inform and consult the affected employees. The employer must also notify the relevant authority of the collective dismissal and results of the consultation.

Collective dismissal rules apply when an employer dismisses, within 30 days and for organisational reasons, at least:

- ten employees, for organisations with 20 to 100 employees;
- 10% of employees, for organisations with 101 to 300 employees;
- 30 employees, for organisations with 300 or more employees.

These thresholds are also met if notice of termination is given to at least five employees and there is a sufficient number of employees terminated by an agreement.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

When large-scale economic or organisational dismissals are proposed the employer must consult employee representatives (i.e. the trade union and/or works council) or, if no employee representatives operate, with the employees affected by the collective dismissal.

7.2 What information must be disclosed to employees and/or their representatives?

An employer must inform the employee representatives or affected employees of its intention to carry out collective dismissals along with the following information:

- reasons for the collective dismissals;
- number and professional qualifications of the employees to be dismissed;
- total number and professional qualifications of all employees in the organisation;
- period over which the collective dismissals should take place;
- proposed criteria for selecting the employees to be dismissed;
- severance pay and all other rights of the affected employees.

7.3 When and how should consultation take place?

An employer must provide employee representatives or affected employees with information no later than 30 days before giving notice of termination. At the same time an employer should organise consultation, usually in the form of a meeting taking place three to five days after delivering the information.

The consultation process is the same as for individual dismissals, that is, the employer must meet with the employee representatives or affected employees and aim to reach mutual agreement. However, there are no consequences if no agreement is reached. The employer need only provide the employee representatives or affected employees with reasoned answers.

7.4 What must be covered in the consultation?

The consultation should focus on the possibility of reassigning the employees to suitable working positions at other workplaces of the employer and on measures for avoiding or limiting the collective dismissals and mitigating the consequences for employees.

8. Is there a requirement to notify the government or any third party?

The employer must inform a labour office that the required information has been delivered to employee representatives. It must also inform it of the results of the consultation. The employment relationships cannot terminate less than 30 days from this notification. If the employer fails to inform the labour office, the notice period extends to 30 days after observing the obligation.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no rules about choosing employees for dismissal and the decision is at the employer's sole discretion. However, the criteria for selection must not be discriminatory.

10. How long does the large-scale process take?

The collective dismissal process can be completed, from initiation to termination of employment of redundant employees, in about three months.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

A dismissed employee may claim the dismissal notice is invalid. The claim must be made to the court no later than two months from the day of termination of employment in accordance with the notice. The employee may be compensated for lost salary and also be reinstated if successful in court. However, in order to obtain reinstatement, the employee will need to have asked for this in writing and without undue delay. If the employee succeeds in court he or she may also claim for harm suffered from the invalid notice of termination.

12. What can the court or tribunal order?

12.1 Can they order compensation?

Employees may claim compensation related to loss only if the dismissal is invalid or the employer has breached its legal obligations towards the employee and this has caused a loss.

12.2 Can they suspend or stop the process?

The court cannot stop the dismissals from going ahead.

12.3 Can they order reinstatement?

If the court declares a notice of termination invalid, the employment continues. The employee is then entitled to compensation for lost salary for the entire period, including the duration of court proceedings and the employer should assign work to the employee or lawfully terminate the employment.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

The decision to make organisational changes does not have to be made in writing. However, as the employee must know about the decision on delivery of the notice of termination at the latest, the employer should issue the decision in writing. The notice of termination must be properly justified. The justification should include the reasons for the organisational change or the notice of termination will be invalid.

Denmark



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A dismissal on economic or organisational grounds can be made if it is reasonably justified by the circumstances of the employer. A demonstrable shortage of work for economic or operational reasons is generally considered reasonable justification.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The selection criteria must not be based on age, sex or any of the other protected characteristics contained in Danish anti-discrimination law.

Further, some collective agreements lay down rules about selection. For example, a number of collective agreements operate a '25-year rule' that makes it more difficult to dismiss employees with more than 25 years of service and some local agreements have a length of service rule that requires the employer to dismiss according to length of service.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There is no obligation on the employer to consult employees or representatives before making a decision to dismiss. However, there may be rules in the applicable collective agreement.

For employment relationships governed by a collective agreement, the consultation obligations will normally be described in detail in the relevant agreement. The obligations vary, but could include consultations with the relevant trade union and shop steward(s) before dismissals are made.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employers must pay employees usual pay during the notice period. For employees covered by Danish employment law for white-collar employees, the notice that must be given increases with length of service, subject to a maximum of six months. Notice periods in collective agreements differ between industries.

A payment because of an economic or organisational dismissal or other set indemnity

There are no statutory rights or entitlements to a specific payment or compensation of any kind in the event of an economic or organisational dismissal. If there is non-solicitation or no-hire clause, it will continue to be effective, unless the employer has terminated it, and the employee will be entitled to compensation. A non-compete clause will, however, become invalid in the event of an economic or organisational dismissal.

Compensation related to loss

If the employee is unjustifiably summarily dismissed or if the employee resigns with immediate effect as a result of a material breach by the employer, he or she is entitled to payment in lieu of notice. If the dismissal is discriminatory, the employee may be entitled to compensation for unfair dismissal.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Depending on the circumstances, employers will typically only offer to pay more than the employee's pay during the notice period if the parties conclude a severance agreement in full and final settlement of any claims.

4. How long does the process take?

The process will vary depending on whether there is a collective agreement. If so, and the trade union does not find the dismissal reasonably justified, it usually has the right to demand a negotiation meeting within a month of the dismissal. If no settlement is reached, the employer is entitled to continue with the process.

5. Are any categories of employees entitled to special protection?

Shop stewards in most industries may only be dismissed for 'compelling reasons' and with an extended period of notice. Health and safety representatives and employee-elected members of the board enjoy the same protection.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. The employer must consult with the representatives of the affected employees. The employer must also notify the relevant Regional Employment Council.

The rules apply in the following situations:

- if ten or more employees will be affected and there are between 20 and 99 employees in the organisation; or
- if 10% or more employees will be affected and there are between 100 and 299 employees in the organisation; or
- if 30 or more employees will be affected and there are 300 or more employees in the organisation.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must consult when large-scale economic or organisational dismissals are proposed.

The employer must consult the employees or any representatives. In most cases, the shop stewards will be the relevant employee representatives to consult.

7.2 What information must be disclosed to employees and/or their representatives?

All relevant important information relating to the proposed redundancies must be given in writing and must at least include the following:

- the reason for the proposed redundancies;
- the proposed number of employees to be made redundant, the categories to which they belong and the period during which the proposed redundancies are to take place;
- the number of employees normally employed in the organisation and the categories to which they belong;
- the proposed selection criteria;
- whether any employees are entitled to severance pay under an individual or collective agreement and, if so, how the payments will be calculated.

7.3 When and how should consultation take place?

The consultation should take place as soon as possible and must always take place before a final decision is made, in order to make it a genuine consultation process. There are no specific requirements as to the number of meetings that must be held with the employee representatives and the parties are not required to reach agreement.

7.4 What must be covered in the consultation?

The purpose of the consultation process is to avoid the proposed redundancies or reduce the number of redundant employees and to mitigate the effects of those redundancies that are unavoidable, for example, by redeploying or retraining the affected employees. Those options must therefore be discussed in the consultation.

8. Is there a requirement to notify the government or any third party?

The employer must notify the Regional Employment Council before consultation begins. The notice must include:

- the reason for the proposed redundancies;
- the total number of employees;
- the period during which the proposed redundancies will be made.

After consultation, the employer must inform the Regional Employment Council of the outcome.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The employer is generally free to decide on the selection criteria it uses as long as the criteria are objective and do not contravene any laws, such as anti-discrimination law. Selection criteria may also be specified in a collective agreement.

10. How long does the large-scale process take?

The process of a large-scale redundancy typically takes between one and four weeks.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

An employer that fails to undertake the consultation process in good faith can be ordered to pay compensation to the employees. Further, an employer that fails to comply with the consultation or notification requirements will be required to pay compensation equivalent to 30 days' pay or, for an organisation with 100 or more employees where at least 50% of the employees will be affected by the redundancies, eight weeks' pay.

Failure to comply with Danish collective redundancies law is also punishable by a fine. For example, an employer may be fined for failing to commence consultation, disclose information and/or notify the Regional Employment Council.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If the dismissal is discriminatory, the employee may be entitled to compensation for unfair dismissal.

12.2 Can they suspend or stop the process?

The court has no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

Only shop stewards and health and safety representatives have a statutory right of reinstatement and only if this is set out in the relevant collective agreement. However, even under the collective agreement, reinstatement is not a sanction that is used very often.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A dismissal may be made if work has diminished substantially and permanently for financial or production-related reasons or because of reorganisation of the employer's operations. In order to terminate an employment contract on economic grounds, the employer must be unable to reasonably retrain the employee or redeploy him or her based on the employee's skills.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The main rule is that only employees whose work actually diminishes or ceases should be terminated. If the work diminishes for a large number of employees, but it is only necessary to make some of the employees redundant, the choice must be fair and non-discriminatory. Collective labour agreements typically require that the employee's skills, length of employment and the number of the possible dependants should be considered.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

An employer planning to dismiss an employee on collective grounds must discuss the reasons for terminations with the employee and/or with the employee's representative. If many employees are to be made redundant, a joint discussion may be held.

Consultation would normally cover the grounds for termination of the employment, the alternatives to termination and the available employment services of the Employment and Economic Development Office.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees are eligible for notice pay according to the notice period determined for each employee in the employment contract. If the employment contract or collective labour agreement does not include provisions about notice, the statutory notice periods will apply and these vary between 14 days to six months.

A payment because of an economic or organisational dismissal or other set indemnity

An employer is not obliged to pay any indemnities relating to the lawful termination of employment contracts.

Compensation related to loss

An employer is not obliged to pay compensation relating to loss. However, if an employee has been dismissed without an adequate reason, an indemnity for wrongful dismissal will be determined. The maximum indemnity is equal to 24 months' salary for normal employees and 30 months' salary for union representatives. If the employer breaches its re-employment obligation, it will also be liable for loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Sometimes organisations offer voluntary redundancy packages to employees who are under the threat of redundancy. This additional indemnity does not, however, affect the employer's liability for wrongful termination unless the employee concerned expressly waives his or her possible claims.

4. How long does the process take?

Finnish employment law does not prescribe the length of the process in relation to individual economic dismissals and it may be carried out in one day. The essential requirement is that the employee is consulted. An employee made redundant has a right of preference for vacant positions of the former employer for nine months following the end of employment.

5. Are any categories of employees entitled to special protection?

Employers have limited rights to dismiss union representatives, industrial safety delegates and other employee representatives. Employers have minimal rights to dismiss employees on maternity, paternity or child care leave. Dismissal of a pregnant employee is assumed to have taken place because of the pregnancy, unless proven otherwise. Employees performing military service are also protected.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply in the case of large-scale dismissals. The most important principle is that organisations are not entitled to make final decisions on redundancies or major business decisions before they have fulfilled the co-operation and consultation obligations. The rules apply if an employer regularly employs at least 20 employees and if the work has diminished substantially and permanently for financial or production-related reasons or for reasons arising from reorganisation of the employer's operations. However, an employment contract must not be terminated if the employee can be repositioned or retrained within the organisation.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must consult when large-scale economic or organisational dismissals are proposed. If the dismissals affect large groups of employees, the parties to the cooperation procedure are the employer and the representatives of the employees affected by the redundancy.

7.2 What information must be disclosed to employees and/or their representatives?

The employer should provide at least the following information:

- the grounds for the intended measures;
- an initial estimate of the number of employees the employer proposes to make redundant;

- a report on the criteria used to determine which employees will be given notice of termination; and
- a time estimate for implementing the terminations.

If the employer considers giving notice to fewer than ten employees, the information may be given to the employees concerned or to the employee representatives.

7.3 When and how should consultation take place?

The consultation must take place before making a final decision on redundancies or major business decisions resulting in redundancies. The employer must give the employee representatives five days' prior written notice of the consultation if the negotiations relate to possible terminations. The minimum consultation period is 14 days if the consultation concerns the termination of fewer than ten employment contracts, or if the employer regularly employs at least 20 but not more than 30 employees, and six weeks if the consultation concerns the termination of at least ten employment contracts. The period is calculated from the date of the first meeting.

7.4 What must be covered in the consultation?

The process must include consultation on:

- grounds for, effects of and alternatives to the planned redundancies;
- reducing the negative impact on employees; and
- opportunities for retraining and re-employing the employees at risk.

The purpose of the consultation is to reach agreement. The employer must keep minutes of the discussion.

8. Is there a requirement to notify the government or any third party?

The employer should inform the local employment authorities about the consultation relating to the possible reduction. A copy of the notice of the consultation must be given to the authorities no later than the date of the first consultation meeting.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The main rule of selection is that only employees whose work actually diminishes or ceases should be terminated. If the work diminishes for a large number of employees, but it is only necessary to make some of the employees redundant, the choice must be fair and non-discriminatory. Collective labour agreements typically require that the employee's skills, length of employment and the number of the possible dependants should be considered.

10. How long does the large-scale process take?

The consultation lasts 14 days to six weeks. The employer must also observe the notice periods and a nine-month right of preference of former employees for new jobs.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Failure to conduct a consultation procedure in connection with redundancies can result in liability to pay an indemnity of a maximum of EUR 34,140 (as at September 2015) for each affected employee. If the employer has terminated an employment contract without a legal basis for doing so, the employer could become liable for paying compensation for unlawful termination of the employment contract. The maximum compensation is equivalent to 24 months' salary for the employee with a maximum of 30 months' salary for union representatives.

12. 12. What can the court or tribunal order?

12.1 Can they order compensation?

If an employee has been dismissed without an adequate reason, a court may order an employer to pay compensation for wrongful dismissal. The maximum indemnity is equal to 24 months' salary. If the employer breaches its re-employment obligation, it will also be liable for loss.

12.2 Can they suspend or stop the process?

The courts have no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

The court cannot order reinstatement.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Finnish employment law is complex and covers the termination of employment and related procedures in detail. Most of the provisions are mandatory, that is, the employer and the employee cannot agree on terms less beneficial to the employee than those provided in law.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made when there is an economic and competitive context which requires a reduction and/or amendments to contracts that are refused by employees and it is impossible to find alternatives.

The circumstances can include:

- economic difficulties;
- technological changes;
- specific circumstances which threaten the organisation's ability to remain competitive

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

Employees to be made redundant must be selected on the basis of objective criteria. The mandatory criteria are:

- family status and dependants;
- continuous service;
- specific characteristics of the employee that may impede finding new employment (e.g. age or disability); and
- professional qualities.

Selection criteria must be assessed by occupational category, that is, a pool of all employees who have common functions and professional training and whose roles are interchangeable.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Each employee must be invited to a preliminary meeting prior to any decision being taken. Reasons for the planned dismissal must be explained and the employees given the opportunity to express an opinion. Employees have a right to be accompanied by a colleague or officially recognised counsel. The preliminary meeting usually focuses on the relevance of the economic grounds, the selection criteria and the employer's obligation to look for and propose any suitable alternative positions for the employee within the organisation or group.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work the notice period or be paid in lieu. Notice periods can be set out in the employment contract but are subject to a minimum provided by law or the applicable collective agreement. The length is usually between one and three months.

A payment because of an economic or organisational dismissal or other set indemnity

Employees with one year of service are entitled to redundancy or enhanced payments in collective agreements. The minimum is one fifth of the monthly remuneration per year of service plus two 15ths per year of service over ten years. Employers with over 1,000 employees must offer 'redeployment' leave up to 12 months and assistance with job hunting. Employees are paid 65% of the average remuneration after the notice period. Under the 1,000-employee threshold, there is a job-finding scheme run by the unemployment authorities. No notice applies. The employer must pay salary in lieu of notice, up to three months, to the authorities and pay any excess to the employee.

Compensation related to loss

There is no automatic right to compensation related to loss. If the individual redundancy is deemed unfair by the courts, the minimum award is six months' average wages including any premiums or bonuses.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Unlike with large scale economic or organisational dismissals, it is not common in cases of individual economic or organisational dismissals to offer more than the legal minimum compensation.

4. How long does the process take?

Depending on the category of employee and the availability of suitable alternative positions, the dismissal procedure typically lasts between four and seven weeks from the search for alternative employment to the notice of dismissal letter. The employer then has eight days to inform the labour authorities of the dismissal.

5. Are any categories of employees entitled to special protection?

Redundancy is prohibited during maternity leave and special rules apply during pregnancy, absences for accidents at work and occupational diseases.

There is a special procedure in relation to employee representatives or similar employees, including an application to the labour authorities for authorisation to terminate the employment contract and prior consultation with the works council.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals.

The employer:

- must consult the works council or reach agreement with the majority unions;
- may negotiate an agreement with the unions;
- must implement measures to reduce the effect of dismissals and assist employees (i.e. a social plan);
- must obtain approval from the labour administration;

- must look for a purchaser if closure is likely.

The requirements apply to organisations with at least 50 employees that may dismiss at least ten employees within a 30 day-period or if successive smaller dismissals have occurred.

In organisations with fewer than 50 employees there is no need for a full social plan. The requirement to attempt to reduce the effect of dismissals are less stringent. For two to nine employees, shorter consultation obligations, individual meetings and offering suitable alternative positions is required, but no social plan or approval by the authorities.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation takes place with the workplace representatives, that is:

- the works council, or if none has been elected, the staff delegates;
- in most cases, the Occupational Health and Safety Committee and in multi-site organisations, at the discretion of the employer, the occupational health and safety coordinating body.

The employer may choose to negotiate with the unions on certain aspects. If an agreement is reached with the unions representing a majority of the employees, this process may substitute, in part, for the consultation with the works council.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must provide the following information in writing:

- detailed reasons for the dismissals (i.e. the economic and competitive context and the impact on the organisation);
- a description of the changes to the organisation and the impact on jobs;
- the number of proposed redundancies;
- the occupational categories affected;
- the proposed selection criteria;
- the numbers of permanent and temporary staff;
- proposed timings;
- proposed social plan, that is, the package of additional compensation and other measures to avoid or reduce the number of dismissals, to assist employees in finding alternative occupations, including the list of available positions within the group, to mitigate the effects of the dismissals that cannot be avoided.

If the redundancies would lead to the closure of the site, information must be given to the works council on the search for a purchaser for the site.

7.3 When and how should consultation take place?

Consultation must be completed before any final decision is made. At least two meetings, at least 15 days apart, must take place with the works council. The consultation period usually lasts longer, with a maximum depending on the number of redundancies. The works council's

opinion is requested at the end of the consultation. The occupational health and safety committee is consulted and an opinion provided to the works council.

Final redundancy and social plans which take account the consultation with the works council and any majority agreement reached with the unions, must be submitted to the local labour authorities.

7.4 What must be covered in the consultation?

The following issues are covered:

- the economic reasons and appropriateness of the reorganisation;
- the appointment by the works council, at the employer's expense, of a chartered accountant with wide investigative powers;
- the affected categories and selection criteria;
- redeployment possibilities;
- social plan;
- timing;
- if a closure is likely, the search for a purchaser.

8. Is there a requirement to notify the government or any third party?

The local labour authorities must be informed at the start of any negotiations or consultations and copied on the information given. Potential closures must be reported to the local mayor.

Once the consultation is complete, the employer must request approval of the plan and the procedure (which will not automatically be given). The redundancy plan must not be implemented until it has been approved.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Employees to be made redundant must be selected on the basis of objective criteria. The criteria that must be considered are:

- family status and dependants;
- continuous service;
- specific characteristics of the employee that may impede finding new employment (e.g. age or disability); and
- professional qualities.

Selection criteria must be assessed by occupational category, that is, a pool of all employees who have common functions and professional training and whose roles are interchangeable.

10. How long does the large-scale process take?

The maximum consultation times provided by law range from two to four months, depending on the number of redundancies. The authorities have 21 days to give approval, reduced to 15 days if a complete majority agreement is reached. Searching for alternative employment typically takes about two months after the approval.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

During the negotiation or consultation procedure, if the unions or works council dispute the regularity of the procedure or the extent of the information provided by the employer to them or to their expert, they can request an injunction requiring corrective measures. The authorities can refuse the plan for reasons including:

- irregularities in procedure;
- an inadequate social plan;
- an inadequate response to any injunctions.

The employer may submit a corrected plan or procedure after completing or redoing the consultations with the works council, depending on the reasons for the authorities' refusal. If the authorities approve the plan, the unions, the works council and the employees can bring a case before the administrative court to request reversal of the approval. If the approval has not been obtained or is reversed, employees can make individual claims for reinstatement or compensation. The employees can claim for unfair dismissal for reasons including insufficient grounds for redundancy, or failure to offer alternative positions or to apply the selection criteria.

12. What can the court or tribunal order?

12.1 Can they order compensation?

Compensation can be awarded, and minimum amounts may apply. For example, 12 months' pay (base pay plus benefits) if the approval of the authorities is not obtained or later reversed owing to inadequacy of the social plan, and reinstatement is not requested or the business has closed. A minimum of six months' pay will be payable if:

- approval is reversed after the dismissal has been notified, for a reason other than inadequacy of the social plan; or
- if the employee makes a successful claim for unfair dismissal; and
- if the parties do not consent to reinstatement.

12.2 Can they suspend or stop the process?

For large scale redundancies an action may be brought challenging the approval by the labour authorities. If successful, no notice of redundancy may be carried out. If the grounds for the reversal are that the social plan is inadequate, any dismissals already notified are void.

12.3 Can they order reinstatement?

Reinstatement can be ordered:

- at the request of the employee, if the redundancy plan has not been approved or if approval has been reversed because of an inadequate social plan (unless the business has closed);
- with the consent of both parties, if approval has been reversed for another reason or the dismissal is unfair.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Only when all alternative positions throughout the group internationally have been proposed and refused by the affected employees can notice of dismissal be given. They remain on the payroll until:

- the end of redeployment leave;
- the start of the '*Contrat de Sécurisation Professionnelle*' job-finding scheme; or
- the end of the notice period.

Thus employees may, for example, remain on the payroll for 12 months or more after notification of dismissal if they accept redeployment leave.

Note that failure by the employer to comply with the required procedures can constitute a criminal offence. For example, a maximum fine of EUR 3,750 multiplied by the number of employees affected may be imposed if the employer fails to consult the works council or to notify the labour authorities as required.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A dismissal can be justified by operational reasons if specific law applies. A reason is usually given, for example, workplace closure, reduction in work or reorganisation. A management decision is generally required that means further employment is impossible. The continued employment of the employee at another job within the organisation must also not be possible.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

When choosing between employees performing the same work at the same level, the employer must take into consideration certain social criteria:

- the duration of employment;
- age;
- obligations of the employee towards dependants; and
- whether the employee is disabled.

As a general rule, employees who would suffer the greatest detriment from termination should be terminated last. If special prerequisites are met, the employer can exclude employees from the social selection process. Further, if there is an agreement with the works council or a collective bargaining agreement with set criteria, these criteria can only be reviewed by the courts where they are deemed grossly inaccurate.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

If a works council exists, it must be consulted at least one week before giving notice to the employee. A dismissal without this prior consultation is invalid. The employer must provide the works council with reasons for the dismissal. It cannot prevent the dismissal but may object. Its objection does not make the dismissal void, but entitles the employee to apply for continued employment during court proceedings for unfair dismissal. There may also be special consultation rights in a collective agreement.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The employee must work out the notice. The employee is entitled to be paid, although he or she is released from the obligation to work. The employer must observe the relevant notice periods for dismissal. The statutory notice periods can be extended by individual contracts or extended or shortened by a collective bargaining agreement.

A payment because of an economic or organisational dismissal or other set indemnity

There is no statutory redundancy payment under German law. The employer need not pay severance unless agreed or for an operational change resulting in a social plan.

Employees may bring a claim contesting a dismissal notice. The court can decide if the termination was justified. If the dismissal is unlawful, employment continues. If justified, the employee is dismissed without compensation. However, termination agreements including compensation are commonly used as a way to avoid a court decision. Agreed severance payments usually range between 50 and 100% of the monthly average salary for each year of service. However, payments can be considerably higher and depend on the chances of a successful claim.

Compensation related to loss

In the case of an illegal dismissal the court will rule that the employment relationship continues. In such a case the employee will receive back pay until the day of the decision of the court (if the proceedings lasted longer than the notice period) and must be reinstated.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

There is no legal minimum compensation. However, severance payments can be high if the employee refuses to settle otherwise and estimates that his or her chances winning a claim are good.

4. How long does the process take?

One week is required to inform the works council of the reasons for the termination and the individual notice periods must be observed. In the case of special protection - and especially if consent of the relevant administration office must be obtained - the process lasts much longer. (The same applies in cases of large scale redundancies.)

5. Are any categories of employees entitled to special protection?

Dismissal of a works council member is generally not permitted unless the organisation is closing. Disabled persons enjoy special protection. Consent of the Integration Office is needed to dismiss a severely disabled employee. For maternity and parental leave, an employee can only be dismissed with consent of the relevant administration office.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large-scale dismissals. If a works council has been established in an organisation regularly employing more than 20 employees, employers are required to consult with the works council, as it has important co-determination rights in relation to large scale redundancies. A failure to observe these requirements can result in the dismissals being void. The requirements apply to 'operational changes':

- reductions, closure, amalgamation, splitting or relocation of operations;
- fundamental changes of operations, business objectives or plants;
- new working practices and production processes.

Mass dismissals without organisational changes occur where dismissals involve:

- more than five employees for 21 to 59 employees;

- more than 25 persons or more than 10% of the workforce for 60 to 499 employees;
- 30 employees or more for 500 to 599 employees; or
- 5% in a business employing 600 or more employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation must be carried out with the relevant works council, that is, the works council, joint works council and group works council. The employer must give complete information, consult and discuss changes with the works council. Further, a 'reconciliation of interests' and 'social compensation plan' must be negotiated. The economic committee must be informed. Economic committees may be established under law in all legal entities regularly employing more than 100 employees. Neither individual employees nor trade unions have the right to be informed or consulted, even if no works council exists. However, the trade unions increasingly try to negotiate social compensation plans in the case of a large scale redundancy.

7.2 What information must be disclosed to employees and/or their representatives?

Generally, there is no detailed list of information that an employer must provide to the works council. The extent of the information to be provided to the works council depends on the circumstances of the case. The employer must outline to the works council and/or the economic committee the essential potential disadvantages for staff which may follow from the operational changes. The works council can request to be provided with documents (e.g. reports by management consultants and balance sheets) relating to the collective redundancy. In organisations with more than 300 employees the works council may instruct a consultant in order to seek external expertise on the collective redundancy. The employer must bear the cost of the consultant. An economic committee has the same information rights as the works council.

7.3 When and how should consultation take place?

There are no strict rules about when and how consultation should be done. The employer must give information to the works council in advance. Before notice of termination can be served, the 'reconciliation of interests' and 'social compensation plan' must be negotiated. The law encourages the parties to come to a mutually satisfactory reconciliation of interests regarding the proposed changes. The employer must inform the works council within a reasonable time about the planned changes. As a rule, the employer should provide the information to the works council at least before the final decision has been taken and in any event before it is published or becomes public.

7.4 What must be covered in the consultation?

The object is to determine whether the planned operational changes are necessary. If so, the timing, scope and form should be discussed. If the works council agrees to the change, this agreement must be put in writing and is called a 'reconciliation of interest'. The employer must also negotiate a social compensation plan.

8. Is there a requirement to notify the government or any third party?

There is an obligation to notify the local employment office if certain thresholds of dismissals are exceeded. The relevant number of employees is calculated based on termination notices delivered and termination agreements concluded within a 30-day period. The numbers vary according to the size of the organisation.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Generally, when choosing between employees performing the same work at the same level, the employer must consider:

- the duration of employment;
- age;
- obligations of the employee towards dependants; and
- the employee's disability.

Generally, employees who would suffer the greatest detriment from termination should be terminated last. In special circumstances, the employer can exclude employees from the social selection process. Further, if there is an agreement with the works council on particular criteria, these criteria can only be reviewed by the courts where they are deemed grossly inaccurate.

10. How long does the large-scale process take?

Usually, negotiations with the works council last three to six months. The employer must attempt to reach an agreement. If none can be reached, the employer and the works council must commence formal board of conciliations proceedings, which may lead to a considerable delay to the process.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Where the employer has not attempted to reach agreement or has acted contrary to a 'reconciliation of interest' without compelling reasons, affected employees may have a right to compensation for resulting harm. The consequences of not seeking agreement on a reconciliation of interest or deviating from it, is that the employer may be ordered by a labour court to compensate the affected employees for any hardship, including loss of job (i.e. redundancy payments), loss in income, increase in commuting costs and costs of a move for a period of up to one year.

An employer that does not comply with the relevant statutory provisions, including disclosure of information to the works council can be subject to substantial fines. If the employer fails to give proper notification to the local employment office before notice is given to employees, the termination is invalid. Further, each employee may bring a claim to the local labour court that the redundancy was invalid.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The court can, with certain exceptions, decide if the termination was justified or not. If the dismissal is unlawful, employment continues and the employee has to be reinstated. The employee receives back payment from the decision of the court if proceedings lasted longer than the notice period.

12.2 Can they suspend or stop the process?

The court can order a dismissal or reorganisation to stop. However, whether a court can stop the dismissals upon application of the works council is disputed. Certain labour courts in Germany will grant preliminary injunctions, on application of the works council, against the employer, ordering the employer to refrain from implementing any measures before full compliance with the legal requirements.

12.3 Can they order reinstatement?

The court can order reinstatement. Any employee can bring a claim to contest the legality of a dismissal notice. The court can only decide whether the termination was justified. If the court holds that the dismissal is not socially justified by a reason provided in law, the employment relationship is presumed to continue.

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A ECONOMIC OR ORGANIZATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has a reduced requirement for employees. This can include financial reasons, where there is a business closure or closure of a department of the organisation and upon relocation or outsourcing of an activity.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

An employer should work out objective criteria to distinguish between employees performing the same role within the organisation, mainly taking into consideration the quality of performance and social criteria such as age, family and financial status, experience and the possibility of finding employment elsewhere.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

It is a good practice to consult with individuals before a decision is taken even in cases where it is not required and to explore ways of mitigating the consequences of the potential dismissal. It is not mandatory to consult with workplace representatives if the organisation has fewer than 20 employees. Consultation would typically cover decisions on the selection of employees, consideration of social criteria, consideration of options other than redundancy, outplacement options, and alternative employment.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work during the notice period. The notice is set out in law or in the employment contract. The statutory notice period depends on the employee's service and varies from one to four months. If notice is given, severance pay is reduced to half of the severance pay due if notice is not given.

A payment because of an economic or organisational dismissal or other set indemnity

Severance pay is based on years of service and monthly salary. A maximum of 16 years' service can be taken into account, for which a maximum of 12 months' salary can be paid as severance. If an employee has worked for more than 16 years for the same employer (by 12 November 2012) each additional year of service qualifies for one month of additional severance pay up to 12 months' pay. There is a cap on the monthly salary for severance pay of high earners. In addition to statutory redundancy payments, there may be a more generous contractual or discretionary scheme.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, discriminatory or relates to a protected employee, it is void and the employee may claim wages in arrears, reinstatement and moral damages. There is no cap on compensation levels.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers can offer more than the legal minimum compensation depending on the seniority and position of the employee to be dismissed. Typically, offers are linked to signing a formal settlement agreement to mitigate the risk associated with future claims.

4. How long does the process take?

Assuming the process for large-scale dismissals does not apply, a consultation process typically lasts between one and two weeks. The length of the process will be affected by the number of suggestions and questions from employees.

5. Are any categories of employees entitled to special protection?

The following categories of employees have special protection:

- pregnant women or women on maternity leave for 18 months after the birth;
- trade union representatives for one year after the end of the term;
- employees on military service for one year after return;
- disabled employees.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. An employer must consult with the employees' representatives and must also notify the relevant government body if the dismissals will be made in an organisation that has more than 20 employees. The rules apply when an employer is proposing:

- more than six dismissals for organisations with 20 to 150 employees;
- over 5% and more than 30 dismissals every month for organisations with over 150 employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation must take place with employee representatives, the trade union covering at least 70% of employees and the majority of those to be made redundant. If several trade unions exist and none satisfy the conditions, employee representatives are agreed by the trade unions. If no trade unions meet the conditions, employees are represented by a three or five-member committee elected by secret ballot by the general assembly of employees. If no appointment is made, the employee representatives are designated by the most representative trade union. If

no representatives are designated, employees are represented by a three or five-member committee of employees who have the longest service.

7.2 What information must be disclosed to employees and/or their representatives?

An employer must provide the following information in writing to the representatives:

- the reasons for the collective dismissals;
- the number of employees to be dismissed by gender, age and specialism;
- the number and the specialisms of the employees working at the organisation;
- the timeframe within which the redundancies will take place;
- the criteria used for selecting the employees to be made redundant;
- an economic-technical report or plan of the dismissals;
- steps to mitigate the consequences of or avoid any redundancies;
- any information that can facilitate the dialogue and the formulation of constructive proposals.

7.3 When and how should consultation take place?

The consultation must take place 'in good time' and the period between the start of the consultation and the date the first dismissal takes effect must be no shorter than 20 days. The minutes of the consultation should be signed by both parties and be submitted to the Minister of Labour. If the parties do not reach an agreement, the Minister of Labour, within ten days of receiving the minutes, issues a decision which either accepts or rejects the dismissals in whole or partially or extends the consultation period for another 20 days.

7.4 What must be covered in the consultation?

The process must include consultation with a view to reaching an agreement with the appropriate representatives about ways of:

- avoiding dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of any dismissals.

8. Is there a requirement to notify the government or any third party?

Copies of all of the documents provided to the employee representatives should also be sent to the Labour Inspectorate. The Ministry of Labour should be notified at the same time.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The rules and criteria that apply for individual dismissals apply to large-scale dismissals. An employer should work out objective criteria to distinguish between employees performing the same role within the organisation, mainly taking into consideration the quality of performance and social criteria such as age, family and financial status, experience and the possibility of finding employment elsewhere. Usually, large-scale dismissals are carried out in a certain department or sector of an organisation and all the employees belonging to that department might be dismissed. The employer must show that there are organisational or other financial reasons that justify the dismissals.

10. How long does the large-scale process take?

The minimum time periods are the same as for individual dismissals, but in a redundancy involving particularly large numbers, the consultation may well take longer if the parties agree to extend the consultation period.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

On an individual basis, employees can bring a claim in respect of unfair dismissal to the Labour Inspectorate and challenge the validity of the dismissal before the courts. To defend a claim successfully the employer will have to show the dismissal was fair, that is, that the redundancy is genuine and a fair procedure was followed. If collective consultation requirements are triggered, but the employer has failed to comply, the employees may bring a claim. If the claim is successful, the court will declare the dismissals void and the employer will have to pay wages in arrears for the period from the dismissal to the date the proper procedure is followed or the employee is reinstated.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair or discriminatory or relates to a protected employee, it is void, and the employee may claim wages in arrears, reinstatement and moral damages. There is no cap on compensation levels.

12.2 Can they suspend or stop the process?

The court has no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

It is common for courts to order the reinstatement of employees if the dismissals are unfair, objective selection criteria were not followed or the dismissals were made without following the legal requirements and procedures.

Hungary



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has a reduced requirement for employees to do work of a particular kind, where there is a business closure or restructuring.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

No specific selection criteria are necessary but an employer must act fairly. The employer should identify an appropriate group of employees from which to select those who may be made redundant. The employer must form objective, clear selection criteria, usually including factors such as work performance, qualifications and length of service. Note that the selection criteria need not be disclosed to affected employees for individual dismissals.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

If the dismissal is not a part of a collective redundancy, there is no consultation obligation. However, if the chairman of the works council or a union officer (during their term of office and for six months thereafter) is to be made redundant, the employer must seek prior consent of the works council or trade union.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work half the notice period or be paid in lieu. For half the notice period, employees must be released from work. The notice period may be agreed in the employment contract, but if not, the legal limits apply. The statutory notice period is 30 days, depending on length of service. In the case of termination by the employer it may increase to 90 days.

A payment because of an economic or organisational dismissal or other set indemnity

Employees with at least three years of service are entitled to severance if employment is terminated for a reason connected to the employer (e.g. redundancy). The amount of severance increases depending on length of service from one to six months. It further increases by one to three months if the employee is within five years of retirement.

When calculating the amount, the following must be taken into account:

- basic salary;
- performance based salary paid in the previous six months; and
- shift and overtime allowances paid in the previous six months.

Compensation related to loss

There is no automatic right to compensation for loss. If the labour court declares a termination unlawful, the employee may claim compensation for loss of salary of up to 12 months. The employee may also claim further damages.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is common to conclude settlement agreements whereby employees receive an amount greater than the statutory payments for termination. The amount will vary depending on the employee's position and length of service and is usually between one to nine months' pay.

4. How long does the process take?

The length of the dismissal process depends on the case. The employer may serve notice of termination to employees immediately after taking a decision about restructuring or reorganisation. (If a collective redundancy process must be carried out it takes longer.)

5. Are any categories of employees entitled to special protection?

The employment cannot be terminated by the employer during periods of:

- pregnancy;
- maternity leave;
- military service;
- unpaid leave for childcare;
- treatment related to fertility as specified in Hungarian law, the maximum length of protection being six months from the commencement date of treatment.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals.

The employer must consult the works council or union representative and provide information before the consultation. The labour authority must also be notified. Collective dismissals apply to employers with more than 20 employees where the employer intends to dismiss, within a 30-day period:

- ten or more for an average of over 20 and less than 100 employees;
- 10% or more of the total headcount for an average of more than 100 but less than 300 employees;
- 30 or more for an average of 300 or more employees.

The thresholds are determined for each premises or business location of the employer. Employees in the same county must be considered together.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult representatives when large-scale economic or organisational dismissals are proposed. Consultation must be carried out with the works council or shop steward. In the absence of these, no consultation is required.

7.2 What information must be disclosed to employees and/or their representatives?

At least seven days before consultation, the following information must be provided to the works council in writing:

- the reasons for the proposed collective redundancy;
- the number of affected employees, according to profession;
- the average statistical number of employees in the preceding six full calendar months;
- the planned period and key dates for the dismissals;
- the selection criteria for the employees to be dismissed; and
- the conditions for eligibility and method for calculating any redundancy payments other than statutory minimum payments.

The information must be disclosed to the relevant labour centre at the same time as providing the information to the works council.

7.3 When and how should consultation take place?

After receiving the mandatory information from the employer, the works council has seven days to consider the proposals before consulting with the employer. Consultation must take place 'with a view to reaching agreement'. The employer and the works council must consult until they reach an agreement or for at least 15 days. The decision on the collective redundancy process may only be made after concluding the consultation with the works council or by reaching an agreement. Generally, employers tend to have one to three meetings with the works council during the 15-day mandatory consultation period.

7.4 What must be covered in the consultation?

Consultation must cover the following issues:

- the potential ways of avoiding the dismissals;
- the principles behind the mass dismissals;
- ways of mitigating the adverse consequences of the dismissals; and
- ways of reducing the number of affected employees.

8. Is there a requirement to notify the government or any third party?

The information given to the works council must be sent to the labour centre. The employer's decision on the redundancy process and the list of the affected employees must also be disclosed to the labour centre. A copy of the written notices must be given to the works council or union representative.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Selection criteria are not set out in law and depend on the circumstances. When selecting affected employees an employer must act fairly and observe equal treatment rules. Usual selection criteria are:

- length of service;
- performance;
- whether the employee's skills are transferrable to another role.

10. How long does the large-scale process take?

There is usually a preparation phase lasting one to four weeks. After providing information to the works council or labour authority and after the consultation, the employer may take the final decision and serve preliminary notice letters. At least 30 days must elapse from this date to serving notice of termination to the employees.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Employees may challenge notice of termination by bringing a claim of unlawful termination against the employer. The employer must prove that it has complied with the procedural rules and that the termination was lawful and fair. Should the court decide that a termination was unlawful the employer must compensate the employee for any damage resulting from the unlawful termination.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The labour court may declare a termination unlawful and the employee may bring a claim for compensation for salary loss. Compensation for salary loss is capped at a maximum of 12 months' salary. The employee may also claim further damages.

12.2 Can they suspend or stop the process?

The court has no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

At the employee's request the court can order reinstatement, if the termination was unlawful and one of the following applies:

- breach of equal treatment;
- the employee had special protection against dismissal;
- no prior union approval;
- the employee was a member of the works council, or employee representative;
- the employment was terminated under a settlement agreement and the employee has successfully challenged the agreement.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

It is common practice for employers to hold a meeting with each affected employee about the termination. In the course of the meeting the employer may either serve notice of termination or the parties may conclude a settlement agreement (both documents having been previously drafted by the employer), depending on the final agreement of the parties. In the case of mass redundancy there must be at least a 30-day period between the preliminary notice letter and the serving of the actual notice.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissal (known as 'retrenchment') for economic reasons may occur where an employer wishes to:

- cut down on expenditure;
- rationalise business operations;
- transfer or close a division or business.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

For blue-collar employees ('workmen'), if the employer proposes to terminate (i.e. 'retrench') a few employees from a certain category of workmen, in the absence of any collective bargaining or any other agreement, the employer must generally terminate the last person to be employed in that category first. This is known as 'last in first out'. It may only be departed from in specific cases and if this is done, the reasons for the departure should be recorded by the employer.

This rule does not apply to white-collar employees. However, if the employer has made an agreement about this with the employees, the employer should follow the terms of the agreement.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Consultation with individuals or unions is not required by law for the dismissal (known as 'retrenchment') of blue-collar workers ('workmen'). However, collective agreements may require consultation with a union. For white-collar employees (non-workmen), an employer should ideally consult the employee individually to facilitate the process.

Employers may also want to allow employees to take voluntary redundancy. The employer may want to offer an attractive severance payment; the possibility of alternative employment; or assistance in finding a suitable job outside the employer's group entities. These matters may be discussed in a consultation.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Generally, blue-collar employees ('workmen') who have at least a year's continuous service (i.e. have worked more than 240 days within 12 months prior to the intended termination date) are entitled to one month's notice or pay in lieu. There are different rules for factories, mines or plantations in which 100 or more workmen were employed on average per working day for the 12 months prior to the intended termination. For white-collar employees, the employer is generally required to give one month's notice.

A payment because of an economic or organisational dismissal or other set indemnity

Blue collar employees ('workmen') who are eligible for notice pay are entitled to severance equivalent to 15 days' average pay for every year of continuous service, or part of a year in excess of six months. For white-collar employees, compensation is payable in accordance with the terms of their employment contract.

Additionally, both blue and white-collar employees (i.e. both workmen and non-workmen) are entitled to payment of accrued leave and any other benefits that may have been agreed to in the contract. If the terms of the employment contract (for both blue and white collar employees) are more beneficial than the statutory obligations, the terms of the contract will prevail.

Compensation related to loss

No additional compensation for loss is provided for by law.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Typically, employers offer more than the statutory or contractual compensation, depending on the employee's seniority and nature of work carried out. It could vary from one to three months' salary or more.

4. How long does the process take?

Generally, the process of dismissing blue-collar workers ('workmen') in all sectors including services may take four to eight weeks or more, depending on the facts. However, the process takes longer in factories, mines and plantations, which require prior government approval for dismissals. For white-collar employees, the timeframe depends on the notice period in the employment agreement and whether the employer expects the employee to work out the notice.

5. Are any categories of employees entitled to special protection?

The law provides protection for employees on maternity leave. An employee on maternity leave cannot be terminated during her absence on account of maternity leave. In addition, if a blue-collar employee ('workman') is in dispute with the employer on a particular ground, he or she cannot be terminated for any misconduct connected with the dispute until the matter has been concluded.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

No additional rules apply to large scale economic or organisational dismissals, but note that special rules do apply to certain types of businesses, as described below. There are special rules for factories, mines and plantations employing on average 100 or more workmen, in which workmen have worked more than 240 days within 12 months prior to the intended termination date.

In the case of factories, mines and plantations employing on average 100 or more workmen, where those workmen have worked more than 240 days within 12 months prior to the

intended termination, the employer must apply for permission from the government in advance. It must give a copy of its application to the affected employees and/or the employee representatives.

Other businesses may notify the government about dismissals (i.e. 'retrenchment') within a stipulated timeframe prior to the dismissal. Note that notification requirements may vary from state to state and the type of business of the employer.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

There is no specific legal provision requiring consultation with blue-collar workers (i.e. 'workmen') or their representatives. However, depending on the terms of any collective agreement with the union, consultation may be required. The employer should also consult with the representatives of the trade union in order to minimise the risk of a potential industrial dispute at a later stage. For white-collar employees, consultation may take place on a one-to-one basis with the employees in order to facilitate the dismissal process.

7.2 What information must be disclosed to employees and/or their representatives?

The following general information may be disclosed:

- the reasons for the proposal;
- the number of affected employees;
- severance compensation eligibility under law or contract; and
- severance compensation being offered by the employer, where this is more than the compensation available by law or in the contract.

7.3 When and how should consultation take place?

Depending upon the number of affected employees, the statutory requirements and any transition involved, the consultation process may need to be initiated three to six months or more in advance of the first dismissal. In fact, if the government refuses to grant permission for a large scale dismissal, this can delay the process even further. In such a case, it may take six to nine months or longer.

7.4 What must be covered in the consultation?

Consultation should include:

- ways of avoiding dismissals;
- ways of mitigating the consequences of any dismissals;
- any termination benefits to be provided to outgoing employees.

8. Is there a requirement to notify the government or any third party?

In the case of factories, mines and plantations employing on average 100 or more workmen the employer must apply for permission from the government in advance and copy its application to affected employees and/or employee representatives. Other businesses may notify the government about dismissals within a stipulated time. The notification requirements may vary from state to state and the type of business of the employer.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

For blue collar employees (i.e. 'workmen') the employer is normally required to dismiss (i.e. 'retrench') the last employee hired in a given category first. This is known as the 'last in first out' rule, 'LIFO'. There is no such requirement in relation to white collar employees. However, if the employer has made an agreement about this with the employees, the employer should follow the terms of the agreement.

10. How long does the large-scale process take?

Generally, for blue-collar employees (i.e. 'workmen'), the process may take between four to eight weeks or more. For workmen employed in a factory, plantation or mine (employing 100 or more workmen on an average per working day in the preceding 12 months), the process may take between six to nine months or more. For white-collar employees, the timeframe depends on the notice period provided in the employment contract and whether the employer wants the employee to work through his or her notice period.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Blue-collar employees (i.e. 'workmen') may bring an industrial dispute against the employer for a breach of the law or unfair labour practice. A claim may be made if adequate compensation has not been paid, as required under contract or law, the proper procedure for dismissal (known as 'retrenchment') has not been followed or proper notice has not been provided in the case, for example, of closure of a business. For white-collar employees ('non-workmen'), an employee may challenge the dismissal based on a breach of the terms of the contract or insufficient notice. In both cases, the employer must prove compliance with applicable laws, demonstrate the dismissal is genuine and that proper procedure has been followed.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a court is of the view that a dismissal (i.e. 'retrenchment') is unlawful because it was carried out without following the proper procedures and/or the employer has used any unfair trade practice, it may order reinstatement with back pay.

12.2 Can they suspend or stop the process?

If an industrial dispute is raised with regard to dismissals and the reorganisation process, the labour or civil court have the power to grant an injunction to stop the process. However, in practice, such injunctions are rarely granted.

12.3 Can they order reinstatement?

If it is proved that the dismissals were in breach of the law, the courts often direct reinstatement, with continuity of service and back pay. However, decisions of the courts vary, depending on the facts of each case.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

State specific laws and compliance may need to be observed depending on the location of the employer and the sector in which it is engaged.

While the information given provides a general view with respect to law and practice in India, it does not apply to all cases and may vary from case to case. It is advisable to seek formal legal advice prior to initiating any employee dismissal.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Economic or organisational dismissals can be carried out where this is wholly or mainly because:

- the employer has ceased (or intends to cease), either carrying on the business the employee was employed for, or doing it in the place the employee was employed, or
- the need for employees to do particular work in the place they were employed has ceased or diminished (or may cease or diminish), or
- the employer has decided to carry on the business with fewer or no employees, or
- the employer has decided that the work the employees were employed to do should be done in a way that they are not sufficiently qualified or trained to do, or
- the employer has decided that the work the employees were employed to do should be done by someone also capable of doing other work and the employee is not sufficiently qualified or trained to do this.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific criteria but an employer must act reasonably, fairly and in a non-discriminatory manner. An employer should identify an appropriate group of employees (i.e. a pool) from which to select employees who may be redundant. Typically the pool will be all employees who perform the role and employees whose roles are interchangeable. Having defined the pool the next stage is to select employees from that pool for redundancy by means of objective and, if practicable, measurable selection criteria.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Individuals must be consulted before a decision is taken and with an open mind. Individuals should be allowed to be accompanied by a colleague or trade union representative at consultation meetings. Consultations would normally include the following matters:

- the reasons for the proposed redundancies;
- the selection criteria;
- the possibility of alternatives to redundancy, including suitable alternative work, reduced working hours or redeployment;
- the terms on which any redundancy would take place.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work the notice period or be paid in lieu. The minimum statutory notice periods are as follows:

- 13 weeks to two years - one week;
- two to five years - two weeks;

- five to ten years - four weeks;
- ten to fifteen years - six weeks;
- 15 years - eight weeks.

A payment because of an economic or organisational dismissal or other set indemnity

Employees with at least two years' continuous service are entitled to a statutory redundancy payment of one weeks' pay plus two weeks' pay for every year of service, irrespective of age. In calculating the payment, weekly pay is capped at EUR 600 per week and it is tax-free. In addition to the statutory redundancy payment, there may be a more generous contractual or discretionary scheme.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, the employee may recover compensation of up to two years' remuneration. If the redundancy was discriminatory, the employee may recover compensation of up to four years' remuneration (as there is a possibility of pursuing a discriminatory dismissal claim in parallel with a discriminatory treatment claim). In a gender discrimination claim, there is no cap on compensation.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer more than the legal minimum compensation. Employers sometimes use a calculation which mirrors the way in which the statutory redundancy payment is calculated, but without applying the statutory cap to a week's pay or increasing the number of weeks' pay per year of service. Typically offers are conditional upon signing a formal settlement agreement to reduce the risk of future claims.

4. How long does the process take?

Except for collective redundancies where a minimum 30-day consultation period should take place, the consultation process typically lasts two to three weeks. The length of the process will be affected by the number of suggestions and questions from the employees.

5. Are any categories of employees entitled to special protection?

No employee is wholly protected from redundancy. However, any termination or notice of termination while on 'protective leave', including maternity leave, will be void.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. An employer must consult with the employee representatives of the affected employees and must also notify the Minister for Jobs, Enterprise and Innovation. Collective redundancy consultation requirements are triggered where an employer, in a period of 30 consecutive days, dismisses:

- at least five employees in an organisation normally employing 21 to 49 employees;
- at least 10 employees in an organisation normally employing 50 to 99 employees;

- at least 10% of the total workforce in an organisation normally employing 100 to 299 employees; and
- at least 30 employees in an organisation normally employing 300 or more employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation must take place with employee representatives at least 30 days before the first notice of dismissal is given. In circumstances where the effected employees may not already be represented by trade unions, employee representatives must be chosen by colleagues to represent them in negotiations.

7.2 What information must be disclosed to employees and/or their representatives?

The following information must be provided to the union or elected representatives:

- the reasons for the proposed redundancies,
- the number and descriptions or categories of employees it is proposed to make redundant,
- the number of employees and descriptions or categories normally employed,
- the period during which it is proposed to effect the proposed redundancies,
- the criteria proposed for the selection of the workers to be made redundant, and
- the method for calculating any redundancy payments (other than statutory redundancy payments).

7.3 When and how should consultation take place?

Consultation must begin at the earliest opportunity and at least 30 days before first notice of dismissal is given. Consultation will normally last for most of the minimum 30-day period. Consultation about avoiding the dismissals and selection criteria will often take place first, so the employer can start the selection process while consultation continues on other issues. Consultation must take place ‘with a view to reaching agreement’. This means that the parties do not have to agree, but the consultation process must be meaningful and the employer should be open to considering suggestions from employee representatives.

7.4 What must be covered in the consultation?

It is important to consult on the proposed selection criteria. Failure to do so could result in the redundancy dismissals being deemed unfair. The legal minimum requirement is for the consultation to cover is:

- avoiding the dismissals;
- reducing the number of employees to be dismissed;
- mitigating the consequences of the dismissals.

8. Is there a requirement to notify the government or any third party?

The employer must notify the Minister for Jobs, Enterprise and Innovation in writing of the proposals at the earliest opportunity, and at least 30 days before the first dismissal takes effect. Further, a copy of the notification must be given to the employees’ representative who may make submissions to the Minister.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Employers must consult with employee representatives regarding the basis for the proposed redundancies and the selection criteria. Employers must act reasonably in effecting all dismissals. Where there is an agreed or established procedure for selection, the employer must show it was applied to each employee or establish that special grounds justified a departure from it. If there is no existing procedure, selection must not be for any discriminatory reason or other reason that could not be a ground justifying dismissal. If a number of employees have similar jobs the employer should be able to show an objective and reasonable basis for selecting those to be made redundant.

10. How long does the large-scale process take?

In a redundancy involving particularly large numbers, the consultation may well take longer than the 30-day minimum. In addition to the consultation period, employees must be given notice of dismissal by reason of redundancy, which can add time onto the overall process.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Employees can bring the following claims:

- An employee with at least one years' service can bring a claim for unfair dismissal to the Workplace Relations Commission for compensation up to two years' remuneration, reinstatement or reengagement.
- An employee may bring claims for discriminatory dismissal and/or discriminatory treatment under equality law for compensation up to two years' remuneration;
- An employee may refer a trade dispute to the Workplace Relations Commission for a recommendation on the merits of the dispute;
- An employee may bring a claim for any failure by the employer to pay statutory redundancy.
- Employees may bring claims under collective redundancy law where there is a failure by the employer to notify the Minister for Jobs, Enterprise and Innovation of the collective redundancy, the potential liability for an employer is a fine of EUR 5,000 or up to EUR 250,000 where the collective redundancies take effect before the 30-days have elapsed from the date of notifying the Minister.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair, the employee may recover compensation of up to two years' remuneration. If the redundancy was discriminatory, the employee may recover compensation of up to four years' remuneration (as there is a possibility of pursuing a discriminatory dismissal claim in parallel with a discriminatory treatment claim). In a gender discrimination claim, there is no cap on compensation.

12.2 Can they suspend or stop the process?

The court can stop a dismissal from going ahead. The Irish civil courts may prevent an employer from carrying out dismissals if employees or the representatives issue injunction proceedings.

12.3 Can they order reinstatement?

The Irish civil courts can order reinstatement in injunction proceedings. Alternatively, the Workplace Relations Commission can make an order reinstating employees.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Employees should always be given a right to appeal any decision by the employer to terminate employment.

Israel 

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

As a general rule, as long as the employer acts in good faith, dismissals may be considered legitimate where they are made for economic or organisational reasons, for example, where there is a business closure or relocation, or the organisation no longer requires as many employees.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific criteria but an employer must act for a valid reason, in good faith, and must not discriminate against employees.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Israeli case law requires an employer to inform, provide relevant documents, consult and negotiate with employee representatives. In practice, this is only practical where an employee representative body exists. However, theoretically the duty to consult exists regardless. The employer must also conduct a personal hearing with each employee prior to making the final decision.

Israeli law does not specify the form, timing or content of the information and consultation obligations, but the discussion would usually cover:

- ways of avoiding the dismissals;
- how to select employees; and
- severance payments and other benefits.

Outplacement support, enhanced pension-related benefits and financial and pension consultation may also be considered.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Minimum notice for monthly paid employees with more than a year's service is one month. For less than a year, the minimum is one day for each month of service for the first six months and two and a half days for every additional month. The employer may terminate employment early and pay salary in lieu.

A payment because of an economic or organisational dismissal or other set indemnity

The employee is entitled to any outstanding amounts (e.g. accrued annual leave and 'recuperation pay') and statutory severance pay. Generally, an employee terminated after more than one year's service is entitled to severance pay of one month's salary multiplied by the years of service, prorated for a partial year. The employer must contribute to a pension scheme,

including paying into a severance pay fund. However, this is often not sufficient to meet the statutory severance and the employer may have to make up the shortfall, unless an arrangement was specifically put in place, in writing, allowing it to pay what is in the severance fund in full satisfaction of its statutory obligations.

Compensation related to loss

There is no automatic right to compensation related to loss. In general, awards are determined in the circumstances and are subject to the court's discretion. If an employee brings a successful legal claim, he or she may be entitled to compensation. Courts commonly award compensation for unlawful termination.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Paying more than the minimum legal entitlement is common where provided by contract, a collective agreement, another binding source or for employees in senior positions. Employees may typically be compensated with enhanced severance pay, additional notice or outplacement consultancy services. Other benefits may be negotiated. Any enhanced benefits are generally only provided if the employee signs a waiver. Termination of employees on sick leave is prohibited until they have used up their sick pay entitlement. It is also prohibited to dismiss an employee for a discriminatory reason or because he or she is an employee representative. Special protection also applies to disabled employees, pregnant employees, employees on maternity leave, or employees on military reserve duty.

4. How long does the process take?

There are no rules on the timeframe for completing the dismissal process. This will depend on the circumstances. The length of the process will be affected by any union involvement, the number of employees to be dismissed, industrial action and any applications to court.

5. Are any categories of employees entitled to special protection?

Termination is generally prohibited unless a special permit is obtained, for employees who are:

- pregnant;
- undergoing fertility treatment;
- on statutory maternity or paternity leave or statutory unpaid leave and for 60 days thereafter;
- on army reserve duty of more than two days and for 30 days thereafter

In addition, termination of employees on sick leave is prohibited until they have used up their sick pay entitlement. It is also prohibited to dismiss an employee for a discriminatory reason or because he or she is an employee representative.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are no additional rules and requirements that apply to large scale dismissals (except that certain notifications should be made in the event of larger scale dismissals).

The rules are the same as for individual dismissals. Israeli case law requires an employer to inform, consult and negotiate with employee representatives about redundancies. The employer must also conduct a personal hearing with each employee prior to making the final decision.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation should be with the employee representatives. This is only practical where an employee representative body exists and can be consulted. However, theoretically the duty to consult exists regardless. The employer must also conduct a personal hearing with each employee prior to making the final decision.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must provide the workers' committee or union with information that is relevant to the employees being dismissed, including the reasons for the dismissals and the selection criteria. The representatives may also request other general information, for example, relating to the reasons why the redundancies are necessary.

7.3 When and how should consultation take place?

Israeli law does not specify the form, timing or content of the information and consultation obligations. A collective bargaining agreement or other binding document may set out specific procedures for collective dismissals and redundancies. There is a general duty to carry out the consultation in good faith before any final decisions are made.

7.4 What must be covered in the consultation?

Israeli law does not specify the form, timing or content of the information and consultation obligations, but the discussion would usually cover:

- ways of avoiding the dismissals;
- how to select employees; and
- severance payments and other benefits.

Outplacement support, enhanced pension-related benefits and financial and pension consultations may also be considered.

8. Is there a requirement to notify the government or any third party?

Where an employer notifies ten or more employees of termination of employment, or notifies a trade union of the terminations, the employer must also notify the relevant governmental labour agency.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific criteria for selection, but an employer must act for a valid reason, in good faith, and must not discriminate against employees. Specific selection criteria may be set out in a collective agreement or other binding source.

10. How long does the large-scale process take?

There are no rules on the time it takes to complete the dismissal process, as it depends on the circumstances. The length of the process will be affected by any union involvement, the number of employees to be dismissed, industrial action and any applications to court. It could take from one to three months, or even more.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

An employee may bring claims about the process or the reason for the dismissal. For example, an employee may claim unlawful termination if the employer has failed to carry out a hearing for the employee prior to making the decision to dismiss or if the dismissal has otherwise not been carried out in good faith or is discriminatory. Claims can also be made if the required payments are not made.

In addition, in collective dismissals where there is a recognised union or collective agreement in place, there is a risk that the union will take steps to prevent the dismissals. This may include:

- organising a full or partial strike or other work disruption;
- promoting negative publicity; or
- applying to court to obtain an injunction to ensure consultation obligations are followed.

Note that this is not an exhaustive list of potential claims.

12. What can the court or tribunal order?

12.1 Can they order compensation?

In general, awards are determined on the circumstances and are subject to the court's discretion. If an employee brings a successful legal claim, this may entitle him or her to compensation. Courts commonly award compensation for unlawful termination.

12.2 Can they suspend or stop the process?

The court may make an order to stop a dismissal or a reorganisation process where there is a good reason to do so, for example, where it is not based on legitimate business reasons (e.g. it involves discrimination) or if the employer is not complying with the relevant consultation and hearing procedures.

12.3 Can they order reinstatement?

The court can order reinstatement, but will usually award compensation to be paid by the employer. Although reinstatement of the employee is also an option, this is rarely the main remedy.

Italy 

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A dismissal for economic or organisational reasons can be made if a position is eliminated due, for example, to a re-organisation, modification of a business activity, modification of tools and equipment used for the business, production reasons or a reduction in orders.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no particular legal criteria for individual dismissals. However, case law states that employers must choose the employees to be dismissed in line with the criteria for collective redundancy, that is, they must exercise good faith and consider the following selection criteria:

- length of service in the company (i.e. last in, first out);
- family circumstances; and
- technical, production and organisational needs.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Organisations with more than 15 employees in a single unit or town or more than 60 in total, must inform the employee and the Labour Office about the intention to dismiss. The Labour Office has seven days to call a meeting, during which the parties must try to reach agreement. Consultation before the Labour Office normally covers the possibility of finding an agreement to avoid the dismissals or to mutually terminate the employment with a payment in return for a waiver of rights, as well as outplacement (i.e. a service to help dismissed employees to find another job). Note that this procedure does not apply to employees hired on or after 7 March 2015 or to executives.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

The applicable national collective agreement provides the notice period length, which depends on the employee's category, level and length of service. On top of a payment in lieu of notice, in all cases of dismissal the employee is entitled to:

- a termination payment (*'trattamento di fine rapporto'*) - a sum already accrued during the employment contract in the organisation's balance sheet;
- prorated supplementary monthly payments up to the termination date;
- a payment in lieu of unused annual leave;
- a contribution to an unemployment allowance (approximately EUR 1,500).

Different rules apply in cases of unfair dismissal, depending on the employee's hiring date (before or after 7 March 2015) and the organisation's size (plus or minus 15 employees within a production unit, or 60 in Italy). Generally, for larger organisations, if the dismissal of an employee hired before 7 March 2015 is manifestly without merit, the judge can award reinstatement and compensation (maximum 12 months' salary) or compensation only (12 to 24 months' salary). In all other cases of unfair dismissal, the dismissal remains valid but

compensation is awarded (12 to 24 months' salary). For unfairly dismissed employees hired on or after 7 March 2015, the employee receives two months' salary for each year of service (minimum four and maximum 24 months' salary).

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employees are often offered more than the minimum entitlement in order to obtain a waiver of rights and thus avoid litigation.

The new regime applying to employees hired on or after 7 March 2015, offers the option to settle before a public body. Under the settlement, the employee waives his or her right to claim against the dismissal and the employer compensates the employee with an amount calculated according to law and not subject to tax or social security contributions.

4. How long does the process take?

The process for individual dismissals for economic and organisational reasons takes about one month.

5. Are any categories of employees entitled to special protection?

The following categories of employees have special protection:

- disabled employees, in certain circumstances;
- employees with maternity or paternity rights;
- pregnant employees until the child is one year old, unless the business closes, or fathers who take paternity leave instead of the mother;
- employees married for one year or less.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are specific rules and requirements that apply to large scale dismissals. The procedure to be followed for collective redundancy involves information and consultation with the works council and the unions and this must also be reported to the Labour Office and/or the Ministry of Labour. The rules apply to collective dismissals based on economic reasons due to 'the reduction or transformation of activity or work' or the business closing down in organisations with more than 15 employees which intend to make more than five employees redundant in a period of 120 days within a single unit or in different units located in the same province.

According to a new law that entered into force in November 2014, executives (a category of workers previously excluded), are now subject to the collective dismissal procedure.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers follow an information and consultation procedure when large-scale economic or organisational dismissals are proposed. The procedure to be followed for collective redundancy involves passing information to and consulting with the works council and the unions. In the

absence of a work council, the information and consultation process is carried out only with the most representative unions at national level.

7.2 What information must be disclosed to employees and/or their representatives?

The information that must be disclosed to the works council and the unions is as follows:

- the reasons for the redundancies and the technical, organisational or production reasons why they cannot be avoided either completely or partially by adopting measures such as using part-time employees or reducing hours;
- the number, rank and job description of all the redundant employees and of the remaining workforce;
- the timetable for the redundancy plan;
- possible measures to reduce the social impact of the redundancy plan;
- the method of calculating the additional sums to which the employees are entitled, but which are not provided for by law or under a collective agreement.

7.3 When and how should consultation take place?

Within seven days of receiving the relevant information, at the request of the unions, a meeting between the parties (i.e. the employer and works council and/or unions) takes place. The consultation must be completed within 45 days. In the event of failure to reach an agreement during this first consultation, the Regional Labour Office, or the Ministry of Labour in Rome, will summon the parties for another review, which will last an additional 30 days. If fewer than ten redundancies are proposed, the time periods are halved.

7.4 What must be covered in the consultation?

The consultation will cover the reasons for the redundancies, the ways in which the numbers of redundancies might be reduced, the organisation's proposals for mitigating the social impact of the redundancies and the proposed criteria for selecting employees to be made redundant.

8. Is there a requirement to notify the government or any third party?

The intention to proceed with a collective dismissal must be sent to the local Labour Office and the Ministry of Labour if the relevant units are in different regions. Within seven days of notice to employees, the employer must send the list of employees to the Labour Authority and unions and describe how the selection criteria were applied.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Italian law provides for mandatory selection criteria, which include length of service within the organisation (i.e. 'last in first out'), family circumstances and technical, production and organisational need. These criteria will be applied in the absence of alternative criteria agreed between the parties during the consultation process.

10. How long does the large-scale process take?

The process takes 75 days. After this, if no agreement has been reached, the organisation can give notice of the dismissal.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Failure to follow the procedure or to apply the selection criteria properly may give rise to two kinds of risks:

- Collective risk: legal action by the unions for anti-union behaviour if the procedure is not followed properly by the employer. If the judge finds a violation of the procedures he or she can grant an injunction against the employer to cease the anti-union behaviour (i.e. an order to comply with the procedure) and to remedy the effects of the anti-union behaviour. Employers that fail to comply with such an order will be criminally liable.
- Individual: every employee dismissed can claim unfair dismissal.

12. What can the court or tribunal order?

12.1 Can they order compensation?

For employees hired before 7 March 2015, compensation for loss of between 12 and 24 months' salary can be awarded to employees unfairly dismissed for failure to comply with the information and consultation procedure. In the case of breach of selection criteria, the employee is entitled to reinstatement plus compensation of up to 12 months' salary.

For employees hired on or after 7 March 2015, compensation for loss can be awarded for failure to comply with the information and consultation procedure and breach of selection criteria. It consists of two months' salary for each year of service (with minimum four and maximum of 24 months' pay).

For executives, if the employer fails to comply with the information and consultation requirements or the selection criteria, compensation of between 12 and 24 months' salary, can be awarded, depending on the seriousness of the breach. Collective bargaining agreements may provide different amounts.

12.2 Can they suspend or stop the process?

If the unions file a claim for anti-trade union behaviour, alleging that the employer has failed to follow the correct procedure, the court can stop the dismissals from going ahead.

12.3 Can they order reinstatement?

The court can always order reinstatement where the dismissal is not in writing. If there is a breach of selection criteria, the judge has the discretion to order reinstatement, but only for employees hired before 7 March 2015.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Currently employees dismissed in a collective procedure are entitled to receive an unemployment allowance from the state, which is, in part, financed by the employer of up to around EUR 10,000 for each dismissed employee. The duration of the benefit depends on both

the age of the employee and the location of the production units and ranges from a minimum of 12 to a maximum of 48 months.

Further, in order to avoid or postpone a collective redundancy, organisations can, in some circumstances (e.g. events out of the control of both the employer and employees, such as seasonal weather, temporary market conditions or company crisis) apply for a period of social concession, during which there is a suspension of the work and the state pays the employees part of their salary.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A reduction in workforce for economic or organisational reasons is a 'dismissal for redundancy'. The employer must have:

- a need to reduce the workforce;
- made all reasonable efforts to avoid dismissal, such as intra-company transfers, offering voluntary redundancies and reducing operating costs;
- appropriate selection processes; and
- appropriate termination procedures.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

In general, permanent employees are afforded stronger protection than temporary employees such as fixed-term employees. Therefore, employers should terminate the employment of temporary employees before permanent employees. The selection criteria must be fair and reasonable (e.g. job descriptions and work performance). Selection must not be based on gender, membership of a union, race, faith, or other discriminatory reasons.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer must discuss termination with each affected employee. It will usually make an announcement, conduct explanatory sessions and invite comments. If the employer has a collective bargaining agreement it must follow the relevant consultation procedures. If an employee belongs to a union and the union requests, the employer must discuss the termination with it. Consultation typically covers the need for workforce reduction, the terms and conditions of the severance package offered by the employer, the selection criteria used and possible alternatives to avoid dismissal for redundancy.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The notice period is contained in the work rules or individual employment contracts. However, there is a statutory minimum of 30 days' notice which can be paid in lieu. For termination by agreement, no notice period is required unless otherwise agreed upon in the work rules or individual employment contracts.

A payment because of an economic or organisational dismissal or other set indemnity

There are no statutory redundancy payments. Therefore, redundancy payments are not required unless agreed in the work rules or individual employment contracts. In practice, it is common for an employer to offer a severance package to each affected employee in addition to severance benefits agreed in the work rules or individual employment contracts. This practice is to secure agreement to termination and therefore avoid future claims.

Compensation related to loss

Generally, the remedy for wrongful dismissal is reinstatement of employment. There is no automatic right to compensation related to loss. In limited circumstances (e.g. where dismissal is discriminatory), an employer will be liable to compensate a dismissed employee for harm the employee has suffered.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is common for employers to offer higher severance packages than those contained in work rules or employment contracts. Packages typically include incentives for employees to agree to termination. Severance is determined by factors such as previous severance agreements, the size of the organisation, length of service and grounds for redundancy. Non-financial support can also be provided.

4. How long does the process take?

The timeframe depends on several factors. If everything proceeds smoothly, it is likely to take at least three to six months to complete the process by agreement. If legal action or labour disputes involving a labour union are initiated by the dismissed employees, the process could take two or more years.

5. Are any categories of employees entitled to special protection?

No categories of employee are entitled to special protection.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

The rules for large-scale economic or organisational dismissals are the same as the rules for individual dismissals, with some additional requirements. In addition to the requirements for individual dismissals, the employer must file with the job-placement office, 'Hello Work':

- a re-employment support programme (at least one month before the first day the employees are expected to leave); and
- notification of a large-scale employment reduction (at least one month before the last day the employees are expected to leave).

The additional rules apply if 30 or more employees are to be dismissed or terminated by an agreement in a one-month period.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. The rules are the same as for individual dismissals. The employer must discuss the termination of employment with each affected employee. If an employee belongs to a union and the union so requests, the employer must discuss the termination of employment with the union.

7.2 What information must be disclosed to employees and/or their representatives?

The rules are the same as for individual dismissals. Consultation typically covers the need for workforce reduction, the terms and conditions of the severance package offered by the employer, the selection criteria used and possible alternatives to avoid dismissal for redundancy.

7.3 When and how should consultation take place?

The rules are the same as for individual dismissals. The employer will usually make an announcement, conduct explanatory sessions and invite comments. It must discuss the termination of employment with each affected employee. If an employee belongs to a union and the union so requests, the employer must discuss the termination of employment with the union.

7.4 What must be covered in the consultation?

The rules are the same as for individual dismissals. Consultation typically covers the need for workforce reduction, the terms and conditions of the severance package offered by the employer, the selection criteria used and possible alternatives to avoid dismissal for redundancy.

8. Is there a requirement to notify the government or any third party?

The employer must file with the job-placement office:

- a re-employment support programme (at least one month before the first day the employees are expected to leave the employer); and
- notification of a large-scale employment reduction (at least one month before the last day the employees are expected to leave the employer).

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The selection criteria must be fair and reasonable (e.g. job descriptions and work performance). Selection must not be based on gender, membership of a union, race, faith, or other discriminatory reasons.

10. How long does the large-scale process take?

The rules are the same as for individual dismissals. If everything proceeds smoothly, it is likely to take at least six months to complete the process by agreement. If legal action or labour disputes involving a labour union are initiated by the dismissed employees, the process could take two or more years.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

An employee may file a complaint with a court for wrongful dismissal. If the claim is successful and the dismissal is declared void, the court will reinstate the employee and order that the employer pay the salary that would have been received up to the date of judgment. Further, the court may order that the employer pay the employee damages. A labour union may request that an employer participate in collective bargaining in matters relating to the dismissal of union members.

If the employer engages in unfair labour practices the union can file a complaint with the Regional Labour Relations Committee. A review by the Committee is similar to court proceedings. It is time-consuming and onerous for the employer. If a party refuses to accept an order of the Committee there are other avenues such as an appeal or filing a complaint, which would further lengthen the proceedings.

12. What can the court or tribunal order?

12.1 Can they order compensation?

Generally, the remedy for wrongful dismissal is reinstatement of employment. There is no automatic right to compensation related to loss. In limited circumstances (e.g. where dismissal is discriminatory), an employer will be liable to compensate a dismissed employee for harm suffered by the employee.

12.2 Can they suspend or stop the process?

The court has no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

The court can make an order for reinstatement.

Latvia 

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissal for economic or organisational reasons can be made for reasons not related to the conduct of an employee or his or her abilities. It must be adequately substantiated on the basis of urgent economic, organisational, technological or similar factors in the organisation.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

Employees with better performance and qualifications have priority. If there are no significant differences in performance and qualifications, priority is given to employees who:

- have worked for the employer for the longest;
- have suffered an accident or occupational disease;
- are raising a child up to 14 years old or a disabled child up to 18 years old;
- have two or more dependants;
- have family members with no regular income;
- are disabled or suffer from radiation sickness;
- have participated in the clean-up at the Chernobyl Atomic Power Plant;
- have less than five years until retirement;
- are completing training related to the job; and
- are politically repressed.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There is no requirement to consult individuals or workplace representatives unless the dismissal qualifies as collective redundancy (i.e. a large-scale dismissal).

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Latvian law does not have provisions on pay in lieu of notice. However, the employer may send the employee on garden leave during notice or sign an agreement to terminate the employment before the end of the notice. Otherwise, the regular salary must be paid during notice.

A payment because of an economic or organisational dismissal or other set indemnity

The employer must pay unused annual leave and severance pay depending on length of service as follows:

- one month's average earnings if the employee has been employed by the employer for less than five years;
- two months' average earnings if the employee has been employed by the employer for five to 10 years;

- three months' average earnings if the employee has been employed by the employer for 10 to 20 years; and
- four months' average earnings if the employee has been employed by the employer for more than 20 years.

Monthly average earnings are calculated across the previous six months' earnings.

Compensation related to loss

If the dismissal is unlawful, the employee has a right to reinstatement to the previous position and full salary for the period of absence from work. If discrimination or adverse treatment causing adverse consequences has occurred, the employee also has the right to request compensation for loss and moral harm.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

The employee and employer may agree on increased severance pay in the collective agreement or employment contract, but it is not common practice. Increased compensation is normally only paid in cases where the employer wants to encourage the employees to terminate employment by mutual agreement.

4. How long does the process take?

The statutory notice period is one month from the date the termination notice is served. Additional time may be required to assess employees and prepare the documentation. Overall, the process should normally take no more than two months. If the employee is a member of a trade union, the process will take longer.

5. Are any categories of employees entitled to special protection?

It is prohibited to dismiss a pregnant woman, a woman in the postnatal period of one year or during the period she is breastfeeding, a disabled person, an employee with temporary incapacity, an employee on leave or an employee who is not performing work for other justifiable reasons.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. The employer must obtain consent from the trade unions before serving notice on member employees. The employer must commence consultations with employee representatives in 'good time' and notify the State Employment Agency and the local government in the territory where the organisation is located, in writing. The provisions apply where the number of employees to be made redundant within a 30-day period is:

- at least five employees for more than 20 but fewer than 50 employees;
- at least ten employees for more than 50 but fewer than 100 employees;
- at least 10% of the total number of employees for at least 100 but fewer than 300 employees; or
- at least 30 employees for 300 or more employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. The consultation must take place with employee representatives. There are two categories of employee representatives:

- employee trade unions; and
- authorised employee representatives.

Employee representatives may be elected if there are more than five employees in the organisation. If there are no elected employee representatives in the organisation and none of the employees are members of trade unions, the employer does not have to consult with individual employees.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must, in 'good time', inform the employee representatives in relation to the collective redundancy and put in writing:

- the reasons for the collective redundancy;
- the number of employees to be made redundant;
- the occupation and qualifications of the employees;
- the number of employees normally employed by the organisation;
- the period within which it is intended to carry out the collective redundancy;
- the procedures for calculating severance pay if different from the statutory procedures.

7.3 When and how should consultation take place?

An employer that intends to carry out a collective redundancy must, in 'good time', commence consultations with employee representatives in order to agree on the number of employees subject to the collective redundancy, the process for the collective redundancy and the social guarantees for the employees. Consultations must be carried out prior to giving notice to the State Employment Agency and local government. Normally the consultations take about two to four weeks. Standard practice is to keep minutes of the meetings.

7.4 What must be covered in the consultation?

During consultations the employer and the employee representatives must explore the possibility to:

- avoid the collective redundancy;
- reduce the number of employees to be made redundant;
- mitigate the effects of the redundancy by taking social measures that create opportunities to redeploy or retrain the employees made redundant.

8. Is there a requirement to notify the government or any third party?

An employer that intends to carry out collective redundancy must, at least 45 days in advance (i.e. before serving notice), notify the State Employment Agency and the local government in the territory where the organisation is located in writing. A copy of the notification must be presented to the employee representatives.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The selection criteria for large-scale dismissals are the same as for regular dismissals. Employees with better performance and qualifications have priority. If there are no significant differences in performance and qualifications, priority is given to employees who:

- have worked for the employer for the longest;
- have suffered an accident or occupational disease;
- are raising a child up to 14 years old or a disabled child up to 18 years old;
- have two or more dependants;
- have family members with no regular income;
- are disabled or suffer from radiation sickness;
- have participated in the clean-up at the Chernobyl Atomic Power Plant;
- have less than five years until retirement;
- are completing job-related training; and
- are politically repressed.

10. How long does the large-scale process take?

The length of the collective dismissal procedure depends on the time spent in consultations with employee representatives and agreements reached. In an ideal situation the entire process, starting with consultations and ending with termination, would take approximately four months.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Compliance with labour law is monitored by the State Labour Inspectorate. If labour laws are breached, a maximum fine of EUR 350 may be imposed on an employer who is a natural person or EUR 1,100 on an employer that is a legal person. In addition, the employee may file the following claims in the court:

- unpaid salary;
- breach of the prohibition on differential treatment with compensation for loss and moral harm;
- an application for a declaration that the employer's notice was void and that the employee should be reinstated in his or her previous position.

In the last scenario the employer has a duty to prove that the notice of termination has a legal basis and complies with the specified procedure for termination and when dismissing the employee, the rights of the employee to continue in employment were not breached.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If discrimination or adverse treatment causing adverse consequences (i.e. where an employer treats an employee less favourably because the employee has exercised his or her rights) has occurred, the employee has the right to request compensation of loss and moral harm.

12.2 Can they suspend or stop the process?

The court has no power to stop dismissals from going ahead.

12.3 Can they order reinstatement?

The court can make an order for reinstatement. When filing a claim the employees can choose whether to be reinstated to the previous position or to terminate the employment relationship from the date of the court decision. In both cases the full salary is awarded to the employee for the duration of the proceedings.

D OTHER IMPORTANT POINTS**13. Is there anything else we need to consider?**

For regular dismissals for economic reasons and large-scale dismissals, the employer must obtain consent from the trade unions before serving notice with respect to all employees who are members of a trade union. The trade union is obliged to provide its response within seven days of receipt of notice. The trade union is not obliged to provide reasons for the refusal to consent to the termination. If consent has been refused, the employer may file a claim to terminate the employment contracts.

In dismissals for economic reasons, employers must offer employees another position in the same or a different organisation, if there are vacancies suitable for the work experience and qualification of the employee. Employees may refuse such an offer.

During the notice period the employer must give to the employee time off work to look for another job. The salary must be paid during this period.

In Latvia there is no special court for labour law disputes. However such disputes are reviewed by the civil courts using an expedited procedure. Further, an individual dispute cannot be settled in an arbitration court, whereas a collective dispute may be transferred to an arbitration court if the employer and employees agree to this in writing.

Luxembourg



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has a reduced requirement for employees to do work of a particular kind, where there is a business closure and upon relocation.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no legal criteria for who should be selected for dismissal. However, in organisations with more than 150 employees, the joint works council has the power to establish or modify general criteria for dismissals.

According to case law, the employer is, in principle, free to select the employees to be dismissed as long as it does not commit an abuse of rights (i.e. it does not act with the sole aim of harming the employees' interests). In practice, the employer should select employees using objective and measurable criteria.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Information provision and consultation with employee representatives may be required for substantial changes in work organisation or an impact on the level of employment. A preliminary meeting with the employee prior to notification of the dismissal is only required if an organisation employs at least 150 employees. Consultation with employee representatives should cover the reasons for the proposed dismissals and possible alternatives to dismissals. During the preliminary meeting, the employer must inform the employee of the reasons for the proposed termination and hear the employee's comments.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Notice periods depend on length of service:

- less than five years - two months;
- five to ten years - four months;
- ten years or more - six months.

Employment contracts or collective agreements may provide for longer notice. Employees must work their notice period. The employer may discharge employees early, but must pay their remuneration.

A payment because of an economic or organisational dismissal or other set indemnity

Employees are entitled by law to a departure allowance after five years of service, as follows:

- five to nine years - one month's salary;

- ten to 14 years - two months' salary;
- 15 to 19 years - three months' salary;
- 20 to 24 years - six months' salary;
- 25 to 29 years - nine months' salary;
- more than 30 years - 12 months' salary.

Employment contracts or collective agreements may provide for higher amounts. An employee who is entitled to a pension or who has been granted a pre-retirement pension is not entitled to a statutory departure allowance.

Compensation related to loss

If a dismissal is deemed unfair, the employee will be compensated for material loss and moral prejudice. Material loss is the difference between the remuneration from the former employer and the subsequent employer or unemployment benefits during a reference period determined by the court. Damages for moral prejudice are set by the judge.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not typical to offer more than the legal minimum compensation. However, once the dismissal notice has been served, the employer and the employee may conclude a settlement agreement to avoid future claims.

4. How long does the process take?

The consultation process with employee representatives lasts between two and four weeks. The length of the process will be affected by the number of suggestions and questions raised.

5. Are any categories of employees entitled to special protection?

The following employees are entitled to special protection:

- members of the staff delegation or the European Works Council;
- pregnant women and employees on maternity leave;
- employees on parental or sick leave;
- employees declared disabled and internally reclassified within the organisation;
- employees on fixed-term contracts.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that can apply to large scale dismissals. Once the employer has informed and consulted the employee representatives and decided to conduct a collective dismissal it must negotiate a social plan with employee representatives. The collective dismissal rules apply to an employer with at least 15 employees contemplating dismissing, within 30 days, at least seven employees or, within 90 days, at least 15 employees for an economic reason. In calculating the number of employees, if at least four employees dismissed during the relevant period are made redundant for a reason unrelated to conduct at work, the employer must include:

- all redundancies for economic reasons made by mutual consent; and
- employees retiring for economic reasons before their usual retirement date.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. The employer must consult with employee representatives when it initially proposes to carry out a collective redundancy. Once it has decided to go ahead, it must then also negotiate a social plan with the social partners.

7.2 What information must be disclosed to employees and/or their representatives?

Once the employer has consulted the employee representatives on the proposed dismissals and made a decision to carry out a collective redundancy procedure, the employer should provide the following information:

- the reasons for the proposed redundancies;
- the number and categories of employees affected by the redundancies;
- the number and categories of employees working on a regular basis in the organisation;
- the period during which the proposed redundancies will take place;
- the selection criteria for employees to be made redundant;
- the method of calculation of any compensation above the minimum provided by law or a collective bargaining agreement, or the reason for not awarding additional compensation.

7.3 When and how should consultation take place?

The employer must consult with the employee representatives on the proposal for collective dismissals. Following the consultation, it may decide to launch a collective redundancy procedure. If so, it must enter into negotiations with the social partners. At the beginning of the negotiations of the social plan at the latest, the employer must notify the staff representatives of its intentions. Employee representatives in the context of negotiation of the social plan are the staff delegates, the joint works council and, if the employer is bound by a collective bargaining agreement, the signatory trade unions.

7.4 What must be covered in the consultation?

The consultation should include discussions about:

- the rules on short-term unemployment and temporary staff leasing;
- possible changes to working time;
- opportunities for training or redeployment;
- career transitions;
- the rules on 'adjustment-advanced retirement' (i.e. a public regime to avoid dismissing older employees);
- implementing and monitoring the social plan.

8. Is there a requirement to notify the government or any third party?

At the beginning of the negotiations to reach a social plan at the latest, the employer must notify the Employment Administration in writing of any collective redundancies and send it any

information given to employees. The Employment Administration must forward this information to the Labour Inspectorate.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no legal criteria for who should be selected for dismissal. However, the joint works council (i.e. in organisations employing more than 150 employees) has the power to establish or modify general criteria for dismissals. According to case law, the employer is, in principle, free to select employees to be dismissed as long as it does not commit an abuse of rights (i.e. it does not act with the sole aim of harming the employees' interests). In practice, the employer should select employees using objective and measurable criteria.

10. How long does the large-scale process take?

In practice, the process takes between four and six weeks if the negotiations for a social plan are successful. If the parties fail to reach an agreement on the content of a social plan, the process takes eight weeks as a conciliation procedure before the National Conciliation Office must be followed.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

For individual dismissals, the employee can bring a claim for unfair dismissal before the Employment Tribunal. To defend such a claim successfully the employer must show that the reasons for the dismissal are detailed, accurate and significant.

For collective redundancies, if the employer carries out dismissals prior to signing, before the National Conciliation Office has produced a report, or before the establishment of a staff delegation, the dismissals will be void.

Any employee dismissed in these circumstances will be entitled to bring a claim for reinstatement before the Employment Tribunal within 15 days of the dismissal. Alternatively, the employee can claim the compensation to which he or she is legally entitled. Further, under labour law, an employee who does not wish to be reinstated may claim additional damages for unfair dismissal before the Employment tribunal.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is deemed unfair, the employee will be compensated for material loss and moral prejudice. Material loss is the difference between the remuneration from the former employer and the subsequent employer or unemployment benefits during a reference period determined by the court. Damages for moral prejudice will be determined by the judge.

12.2 Can they suspend or stop the process?

The courts have no power to stop dismissals from taking place.

12.3 Can they order reinstatement?

For collective dismissals, a court may order reinstatement only if the dismissal does not comply with the law. For an unfair dismissal, the employee can ask for reinstatement, but only the court has the power to recommend this. The employer may either accept, or pay one month's salary in addition to compensation for unfair dismissal.

Mexico



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Mexican labour law allows dismissal for economic or organisational reasons when:

- a reduction in the workforce is required for financial reasons;
- insolvency is legally declared;
- new technology, machinery and/or equipment is introduced; or
- *force majeure*, an act of God or incapacity of the employer causes the suspension or termination of the relationship.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific selection criteria in law but criteria may be mutually agreed with employee representatives or the union, provided these are fair and made in good faith. Preference must always be given to employees with the longest service. If no agreement is reached, the employer may propose to the court a group of employees or positions from which to select employees.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

It is mandatory to notify employees and any relevant union and a process 'of economic nature' must be initiated by the employer before a Labour Conciliation and Arbitration Board. The Labour Board will try to mitigate the effects of a total or partial suspension of activities or a reduction in the workforce. Consultation would typically cover decisions about selection criteria, alternatives to redundancy and alternative employment. If redundancy is required because of the introduction of new machinery and equipment, a mutual agreement may be reached. If no agreement is reached, the Labour Board must authorise the redundancies.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Notice periods are neither provided for nor enforceable under Mexican labour law. Redundancies may be carried out with immediate effect once the Labour Board has authorised the redundancy, if required, or when a mutual agreement is reached and the corresponding severance has been paid.

A payment because of an economic or organisational dismissal or other set indemnity

Employees are entitled to severance of three months' salary plus 20 days' salary per year of service. This is based on total salary including bonuses, commissions, premiums and any other benefits granted to employees. Employees are entitled to accrued benefits and a seniority premium of 12 days per year in the job with a daily cap of twice the minimum average daily wage in Mexico. For redundancies resulting from the introduction of new technology, machinery or equipment, employees are entitled to the above benefits but with four months'

severance instead of three. In addition, there may be a more generous contractual or discretionary scheme.

Compensation related to loss

There is no compensation related to loss under Mexican labour Law.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not common practice to pay more than the statutory severance entitlement. However, there may be a more generous or discretionary scheme included in the applicable collective bargaining agreement. Any payments will be linked to signing a formal settlement agreement aimed at avoiding future claims.

4. How long does the process take?

The process generally does not take longer than four weeks.

5. Are any categories of employees entitled to special protection?

Generally, no employee is wholly protected from redundancy. However, preference must be giving to the most senior employees and it is always wise to review redundancy proposals for employees on maternity leave or medical leave of absence.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are no additional requirements that apply to large scale economic dismissals. The rules are the same as for individual dismissals. It is mandatory to notify employees and any relevant union and a process 'of economic nature' must be initiated by the employer before a Labour Conciliation and Arbitration Board. The Labour Board will try to mitigate the effects of a total or partial suspension of activities or a reduction in the workforce.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. The rules are the same as for individual dismissals. It is mandatory to notify employees and any relevant union.

7.2 What information must be disclosed to employees and/or their representatives?

The rules are the same as for individual dismissals. There are no mandatory information requirements.

7.3 When and how should consultation take place?

It is mandatory to notify employees and any relevant union and a process 'of economic nature' must be initiated by the employer before a Labour Conciliation and Arbitration Board. The

Labour Board will try to mitigate the effects of a total or partial suspension of activities or a reduction in the workforce.

7.4 What must be covered in the consultation?

The rules are the same as for individual dismissals. Consultation would typically cover decisions about selection criteria, alternatives to redundancy and alternative employment.

8. Is there a requirement to notify the government or any third party?

The employer must initiate a process before a Labour Conciliation and Arbitration Board which will try to mitigate the effects of a suspension of activities or a reduction in workforce. If redundancy is because of new machinery and equipment, an agreement may be reached without the Labour Board. Otherwise, the Labour Board must authorise redundancies.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific selection criteria in law but criteria may be mutually agreed with employee representatives or the union, provided these are fair and made in good faith. Preference must always be given to employees with the longest service. If no agreement is reached, the employer may propose to the court a group of employees or positions from which to select employees.

10. How long does the large-scale process take?

The rules are the same as for individual dismissals. The process generally does not take longer than four weeks.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Failure to obtain authorisation from a Labour Board, if required, may result in a claim for unfair dismissal, payment of full severance and sometimes reinstatement.

12. What can the court or tribunal order?

12.1 Can they order compensation?

There is no right to compensation for loss. Employees are only entitled to receive full severance.

12.2 Can they suspend or stop the process?

The Labour Board has the power to stop dismissals from going ahead, because if the employer does not prove it is in a serious financial situation, the Labour Board may not authorise the redundancy or reorganisation process.

12.3 Can they order reinstatement?

If the Labour Board does not authorise the dismissals, this may result in an order to reinstate employees.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

A dismissal for economic or organisational reasons may be considered if the organisation needs to restructure because of a reduction in orders and/or work, unanticipated outcomes, business or organisational reasons, business relocation, technological changes, the lapse of a wage-cost subsidy or closure of all or part of the organisation.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The employer must divide employees employed in comparable positions into age groups and decide how many to make redundant in each category. It must use the percentage of redundancies per position to establish how many to make redundant in each group. The seniority principle applies, so employees with the fewest years of service per group are dismissed first. Employees on fixed term contracts and temporary workers qualify for dismissal before those on indefinite contracts. These principles must always be taken into account for any reduction regardless of size. If not, the social security institute will not authorise the dismissals. Employers and trade unions may agree alternative selection rules or criteria in a collective agreement, if the statutory criteria for such an agreement are met.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

It is not necessary to consult individuals. A works council or other body may need to be consulted. Some collective labour agreements also require consultation with the trade unions. A consultation would normally cover an explanation of the reasons for the decision, the alternative solutions considered and measures to be taken to mitigate the consequences of the dismissal. For reductions to headcount, the employer must obtain prior approval from the Social Security Institute.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must either work during their notice period or be paid in lieu. Payment in lieu of notice is only permitted with the employee's consent.

A payment because of an economic or organisational dismissal or other set indemnity

After the Social Security Institute has given its approval and the employer has given notice to the employee(s), a statutory transition payment is payable, if the employment relationship has lasted two years or more. It is calculated as follows:

- for the first ten years of employment: 1/6 monthly gross salary per six months of employment;
- thereafter: 1/4 monthly gross salary per six months of employment.

This is capped at the higher of:

- the annual gross salary, or
- EUR 75,000 gross.

A temporary scheme applies to employees over 50, providing for a higher amount and to employers with fewer than 25 employees, often resulting in a lower amount. An employee cannot claim a transition payment, for example, in cases of serious misconduct by the employee.

Compensation related to loss

There is no automatic right to compensation related to loss, besides the statutory transition payment. If the employee does not agree with the given notice, the employee could either claim reinstatement or 'additional reasonable compensation'. 'Additional reasonable compensation' can only be claimed for serious misconduct by the employer or if the employer hires a new employee in the same job, within six months of the dismissal. However, it is unlikely it will often be ordered in practice.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is common practice for employers to try and negotiate a settlement agreement with employees, to avoid having to apply to the Social Security Institute for approval for the dismissal(s). In order to give employees an incentive to agree a settlement, employers will usually offer more than the statutory minimum compensation.

4. How long does the process take?

To obtain permits from the Social Security Institute currently takes four to six weeks. The employer is allowed to subtract the time taken by the Social Security Institute from the notice period. However, the employer must observe a minimum notice period of one month.

5. Are any categories of employees entitled to special protection?

Employees who are ill, pregnant or members of the works council are protected. The Social Security Institute will not grant its permission, unless it is expected that the prohibition against termination of employment (e.g. the illness) will no longer exist within four weeks of the date the Social Security Institute grants permission.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

For collective dismissals special rules apply. An employer intending to dismiss at least 20 employees must notify the Social Security Institute. Further, the employer must inform the relevant trade unions in writing and invite them to a meeting. If the organisation has established a works council, it must be consulted. The rules apply if an employer intends to dismiss 20 or more employees within the same work area of the Social Security Institute within a period of three months.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

There are additional rules and requirements that apply to large scale dismissals. Consultation takes place with workplace representatives such as trade unions, works councils or other co-determination bodies.

7.2 What information must be disclosed to employees and/or their representatives?

The trade union, the works council or other co-determination body must be provided with the following information:

- the reasons behind and the scope of the reduction;
- the alternatives that have been considered;
- the purpose behind the reorganisation, preferably supported by reports from external consultants or auditors if considered appropriate, and the economic and employment consequences;
- if a works council exists and if it has an advisory right, when it will be consulted;
- the number of employees that are to be made redundant;
- the intended date of termination;
- the criteria by which the employees are to be selected (i.e. the principle of reflection); and
- proposed measures taken to mitigate the consequences of the dismissals for the employees concerned.

7.3 When and how should consultation take place?

The employer must report the intention of a collective dismissal in a timely manner to the relevant trade unions in writing and invite them to a meeting. After the information has been provided, the employer generally consults on a social plan. The employer must also ask the works council for advice in writing. The advice must be requested in a timely manner to ensure the works council is able to influence the proposals. The works council is entitled by law to at least one consultation meeting with the employer before giving its advice. During the meeting, a representative of the shareholders must be present.

7.4 What must be covered in the consultation?

The request to the works council must include:

- the reasons and scope of the reduction;
- alternatives considered;
- the purpose;
- the number of employees to be made redundant;
- the intended date of termination;
- the criteria by which the employees are selected;
- consequences for the employees; and
- proposed measures to mitigate the consequences.

8. Is there a requirement to notify the government or any third party?

The social security institute must be provided with the information given to the trade union or works council and must be notified at the same time as the trade unions.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The employer must divide employees in comparable positions into age groups and decide how many to make redundant in each category. It must use the percentage of redundancies per position to establish how many to make redundant in each group. The seniority principle applies per group, so employees with the fewest years of service are dismissed first. Moreover, employees employed on fixed term contracts and temporary workers qualify for dismissal before employees on indefinite contracts. These principles must always be taken into account for a reduction, regardless of size. If not, the Social Security Institute will not authorise the dismissals.

Employers and trade unions may agree alternative selection rules or criteria in a collective agreement, provided that the statutory criteria for the alternative rules are met.

10. How long does the large-scale process take?

The length of the Social Security Institute procedure, including consultation, depends on the quality of the information provided by the employer and the impact of the dismissals on the organisation and the labour market. The procedure generally takes from three to six months for permission to be given to the employer. The employer must then give notice to the employee. The notice period may be shortened by the length of time taken by the procedure before the Social Security Institute, provided that a minimum notice period of one month remains.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Failure to follow the statutory requirements will result in the Social Security Institute refusing permission to dismiss the employees. If the employer's final decision is not in accordance with the works council's advice, implementation must be suspended for one month. During this period the works council may lodge an appeal against the decision with the Commercial Chamber of the Amsterdam Court of Appeal. If any other part of the procedure provided for by law has not been followed, the Social Security Institute will not give permission for the dismissals. If the employer refuses to pay the statutory transition payment or if the employee does not agree with the given notice, yet the Social Security Institute nevertheless gives permission, the affected employees may apply to the court for enforcement of payment of the transition payment, 'additional reasonable compensation' or reinstatement.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The court can order the employer to pay the statutory transition payment if the employer refuses to do so. 'Additional reasonable compensation' can be claimed for serious misconduct

by the employer or if the employer hires a new employee in the same job, within six months of the dismissal. However, it is unlikely it will often be ordered in practice.

12.2 Can they suspend or stop the process?

The Commercial Chamber of the Amsterdam Court of Appeal may order the process be put on hold until consultation requirements are satisfactorily met. It may also consider the way an employer reached a decision unreasonable and order implementation of the decision to be stopped. The Social Security Institute can deny permission to give notice, either in general, or in individual cases.

12.3 Can they order reinstatement?

A claim for reinstatement, although legally possible, is almost never made.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

The Dutch Parliament has adopted new dismissal law, which entered into force on 1 July 2015. Some items covered in this new law, will need clarification by means of case law (e.g. how often 'additional reasonable compensation' will be granted by the court and what the amount of this compensation will be).

Norway



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Employees can only be dismissed if the grounds are objectively justified for reasons related to the employee or employer. Dismissals for economic or organisational reasons are related to the employer and include reductions in production and other adjustments. Redundancies are not justified if there is other suitable available work for the employee.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The employer must undertake a fair selection process which must be based on justifiable criteria. The selection group must be identified and is generally the entire business, but certain exceptions exist. The group can be narrowed down to a department, a particular category of positions or other criteria, if this is considered justified. Defining the selection group must be based on the individual circumstances. Affected employees should be chosen from within the selection group. The choice of employees may be based on several factors including qualifications, education, work experience and seniority. Social factors such as family situation or other responsibilities can be part of the assessment. The rules may vary depending on collective agreements.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer must follow a fair procedure in carrying out dismissals. The law contains procedural requirements regarding individual dismissals. Before deciding whether to give notice the employer must try to discuss the matter with the employee or the dismissal may be deemed unfair. The employee is entitled to be accompanied by a representative. The purpose of the consultation meeting is to ensure that all the relevant facts have been taken into account before the final decision is taken. The discussions must include the grounds for dismissal and give the employee the opportunity to put forward relevant information and give an opinion about the possible termination.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The normal period of notice varies between one and six months depending on a combination of age and seniority. A longer period of notice may be agreed.

A payment because of an economic or organisational dismissal or other set indemnity

Valid termination of the employment contract does not trigger any rights to compensation beyond notice pay, unless this is based on a collective agreement or agreed between the parties.

Compensation related to loss

No compensation for loss is payable, except where the dismissal is found to be invalid by the court.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

The legal minimum compensation is notice pay. The employer is not obliged to pay severance unless agreed between the parties. However, it is quite common for employers to try to avoid or settle disputes or to offer severance packages to employees. This is because employees who contest their dismissal in court are entitled to remain in their jobs until a final judgment has been made (often about eight months). Employees can also continue in their job while they appeal. At the employer's request, the court can decide that the employee must leave his or her post while the case progresses, but the threshold for this is quite high.

4. How long does the process take?

The length of the process varies. The notice period is usually three months, which runs from the start of the month following that during which notice is given. Before making a decision regarding the dismissal, the employer must discuss the matter with the employee in a consultation meeting. This will usually prolong the process.

5. Are any categories of employees entitled to special protection?

The law grants protection against dismissal for employees:

- on sick leave due to accident or illness during the first 12 months, where the dismissal is based on the sick leave;
- for pregnancy or maternity leave: the employee is not protected as such, but the notice period will not start to run (be effective) until after the end of pregnancy or maternity leave;
- on military service.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that can apply in the case of large scale dismissals. The employer must enter into consultations with the employee representatives to try to reach an agreement to avoid or reduce the redundancies. When considering ceasing activities, the possibility of further operations must be discussed including activities potentially being taken over by employees. If redundancies cannot be avoided, the employer must try to mitigate any adverse effects.

'Collective redundancies' occur where the employer considers giving notice of dismissal to at least ten employees within a period of 30 days for reasons not related to the individuals. For it to be fair, an employer must demonstrate the redundancy is necessary and must follow a fair procedure. This involves consulting the employee representatives and looking for suitable alternative employment and other ways to avoid the redundancy. Similar obligations will also normally apply under applicable collective agreements irrespective of the number of employees at risk.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Individual discussions are required in addition to discussions with employee representatives.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must initiate discussions with the employee representatives as soon as possible and before the final decision is made to reach an agreement to avoid or reduce the collective dismissal. The employer must inform the representatives of the following in writing:

- the grounds for the redundancies;
- the number of employees who may be made redundant;
- the categories of workers to which they belong;
- the number of employees normally employed;
- the period during which the redundancies may be effected;
- criteria for selection; and
- criteria for calculating any severance pay.

The information must be given to the employee representatives when the employer holds discussions, at the latest. The employer must also notify the Labour and Welfare Service. The collective dismissals have effect no earlier than 30 days after the notification. The notice period can be extended by the Service.

7.3 When and how should consultation take place?

Consultation should be carried out as soon as possible and before the final decision has been made, with the aim of reaching an agreement to avoid the collective dismissal or reduce the number of employees dismissed.

7.4 What must be covered in the consultation?

The consultation must cover:

- the grounds for any redundancies;
- the number of employees who may be made redundant;
- the categories of workers to which they belong;
- the number of employees normally employed;
- the period during which such redundancies may be effected;
- criteria for selection; and
- criteria for calculating any severance pay.

8. Is there a requirement to notify the government or any third party?

The employer must notify the Labour and Welfare Service. According to Norwegian law, an employer intending on closing down an organisation with more than 30 employees must notify the county authority first. The same applies if the employer plans to make nine out of ten employees redundant.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The employer must select based on justified criteria and must operate a fair procedure. The selection group must first be decided. This is generally the entire business, but exceptions are permitted. The group can be narrowed to a unit, a particular category of positions or other parameters. Defining the selection group must be done based on a thorough assessment of the circumstances. Employees must be chosen from within the group based on factors such as qualifications, education, work experience and seniority. Social factors such as the employee's family situation or other responsibilities can also be part of the assessment. Collective agreements may also contain rules.

10. How long does the large-scale process take?

The process takes at least 30 days, but it can easily take up to about three months.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Employees who contest their dismissal in a lawsuit are entitled to remain in their position until a final and enforceable judgment has been made by the court (this includes during any subsequent appeal process). Therefore, they may go to work and receive salary for what is normally about eight months before the first court hearing. The consequences of an unfair dismissal may be, if requested by the employee, that the court rules the dismissal invalid. In this case the employment relationship continues. For an invalid dismissal, the employee may be entitled to compensation. Compensation will be determined by the court. The legal provisions concerning compensation include the option of damages for non-economic loss. A claim for compensation is brought before the ordinary courts of law. The compensation will be determined at the court's discretion and based on the employee's financial loss resulting from the unfair dismissal. In addition, the court can grant damages for non-economic loss.

12. What can the court or tribunal order?

12.1 Can they order compensation?

Compensation for both existing and future loss is payable if the dismissal is found to be invalid.

12.2 Can they suspend or stop the process?

Collective dismissals have effect no earlier than 30 days after notification has been sent to the Labour and Welfare Service. The notice period can be extended by the Labour and Welfare Service, but it has no power to stop the dismissals from going ahead.

12.3 Can they order reinstatement?

In a dispute concerning whether an employment relationship has been legally terminated, the employee is entitled to remain in post until a final and enforceable judgment has been made by the court, unless the court, at the employer's request, decides the employee must leave his or her post while the case is in progress.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Businesses that regularly employ at least 50 employees must set up a working environment committee (WEC) on which the employer, the employees and the occupational health service are represented. The WEC must make efforts to establish a satisfactory working environment in the business and must follow up on issues relating to the safety, health and welfare of employees. In undertakings that regularly employ at least 50 employees, the employer must also provide information about issues of importance to employees' working conditions and discuss them with the employees' elected representatives. This includes:

- information about the current and expected development of the organisation's activities and economic situation;
- information and consultation about the current and expected workforce, including any cutbacks and measures considered by the employer in relation to this; and
- information and consultation about decisions that could result in significant changes in the organisation of work or conditions of employment.

The information should be provided as soon as possible and in such a way as to enable the elected employee representatives to familiarise themselves with it, investigate it, consider it and prepare any questions. If the needs of the business dictate that specific information should not be disclosed, the employer may impose a duty of secrecy on the employee representatives and any advisers. In special cases, the employer may omit to provide information or participate in consultations if this would clearly harm the business. Disputes concerning the employer's decision to impose a duty of secrecy or omit to provide information or participate in consultations may be brought before the Norwegian Board of Industrial Democracy by the employees. If the employer is party to a collective pay agreement, other rules may apply.

Panama



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made in the event of the insolvency of the employer, the closure of the organization, a reduction in the workforce for financial reasons or a reduction in the activities of an employer owing to a serious economic crisis.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The following criteria apply in order of priority:

- Dismissals must begin with employees of the lowest seniority within the various labour categories. Panamanian employees must be given preference over foreign employees, unionised employees over those that are not unionised and more efficient employees over less efficient.
- Pregnant employees will be the last employees to be dismissed, even with if not within the preceding groups.
- After applying the above provisions, employees with union protection will have preference over those without.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There is no requirement for consultation with the individual, but the employer requires an authorisation from the Ministry of Labour to be able to dismiss an employee for economic reasons and the Ministry of Labour will notify the employee of the employer's request for authorisation. There is no requirement for individual consultation.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees dismissed for economic reasons are not eligible for notice pay.

A payment because of an economic or organisational dismissal or other set indemnity

The following amounts are payable for economic dismissals:

- Compensation of one week's salary for each complete year of service from the beginning of the employment. If an employee does not complete a year of service, payment is made proportionately, by multiplying the sum earned by 1.92%.
- Compensation of 30 days for each period of 11 months worked or one day for each period of 11 days worked.
- A 13th month payment equal to an additional month of work, divided into three installments per year.

Compensation related to loss

There is no automatic compensation related to loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is not normal practice to offer more than the legal minimum compensation.

4. How long does the process take?

The authorisation request to the Ministry of Labour must not take longer than 60 calendar days. If the Ministry of Labour does not rule on the request, the employer is granted the authorisation automatically and the dismissal considered fair. Thus, the process should be complete within 60 days.

5. Are any categories of employees entitled to special protection?

Pregnant employees must be the last to be dismissed for economic reasons.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are no additional rules or requirements that apply to large-scale economic or organisational dismissals. The rules are the same as for individual dismissals. The employer requires an authorisation from the Ministry of Labour to be able to dismiss employees for economic reasons. The Ministry of Labour will notify the employees of the employer's request for authorisation.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

There are no rules that apply to large scale dismissals and there is no requirement to consult. There is no requirement to consult about large scale dismissals.

7.2 What information must be disclosed to employees and/or their representatives?

Not applicable.

7.3 When and how should consultation take place?

Not applicable.

7.4 What must be covered in the consultation?

Not applicable.

8. Is there a requirement to notify the government or any third party?

Large-scale economic dismissals require prior authorisation from the Ministry of Labour and Labour Development. The employer must make a request for authorisation to the Ministry of so that the Ministry can grant an authorisation for economic dismissal. The Ministry of Labour must notify the employees.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The following criteria apply in order of priority:

- Dismissals must begin with employees of the lowest seniority within the various labour categories. Panamanian employees must be given preference over foreign employees, unionised employees over those that are not unionised and more efficient employees over less efficient.
- Pregnant employees will be the last employees to be dismissed, even with if not within the preceding groups.
- After applying the above provisions, employees with union protection will have preference over those without.

10. How long does the large-scale process take?

A large-scale redundancy process will not take more than 60 calendar days. (If by that time the Ministry of Labour has failed to grant authorisation, authorisation will be automatic.)

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

If the employer has dismissed staff for economic reasons without the authorisation of the Ministry of Labour and Labour Development, the dismissed employee can claim and indemnity for dismissal without just cause.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The court can order the employer to pay compensation for loss or declare a lien over the assets of the employer to secure payment.

12.2 Can they suspend or stop the process?

A court can stop a dismissal for economic reasons where the employer has not obtained the prior authorisation from the Ministry of Labour or has not complied with the selection criteria for dismissal.

12.3 Can they order reinstatement?

A court can reinstate employees that have been dismissed for economic reasons without the authorisation of the Ministry of Labour if the employer did not follow the selection process for dismissal.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

The employer may terminate employment contracts when it has economic, technological, structural or similar reasons to do so. Dismissals on these grounds are only permitted in cases involving more than 10% of total staff.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no rules or criteria about selection for redundancy. The decision is at the sole discretion of the employer.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Note that the employer may not dismiss an employee for economic reasons if the total number of employees being dismissed is less than 10% of the workforce. In cases of economic dismissals, the employer must provide information to the union or the employees about the reasons and workers affected by the dismissals. It should also inform the Labour Authority. Typically, consultation would cover the selection criteria and the reasons for the dismissals. The employer will negotiate to agree on measures to avoid or limit redundancies including:

- temporary suspension of employees;
- modification of working conditions;
- collective review of conditions and ways to enable economic activity of the employer to continue.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

At the time the dismissal is communicated, the employer must pay the 'social benefits' connected to the notice. These include annual leave pay and pay owed in relation to the bonuses normally payable in July and December.

A payment because of an economic or organisational dismissal or other set indemnity

The employer need only pay the applicable 'social benefits' (e.g. annual leave pay) and no indemnity for unjustified dismissal.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, the employee is entitled to a special indemnity of one and a half times the monthly salary per year of service, with a maximum of 12 times the monthly salary. Periods of less than a year are paid prorata.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

When negotiating termination it is common for the employer to pay either the amount of the indemnity for unjustified dismissal or a percentage of it.

4. How long does the process take?

The length of the process depends on the reasons for the redundancies and the number of workers. In general it takes about four months.

5. Are any categories of employees entitled to special protection?

The reasons for selecting a worker for collective dismissal must be objective. Pregnant employees, union members, ethnic minorities or employees with different sexual orientation must not be discriminated against.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that can apply in these circumstances. An employer must consult with the appropriate representatives of the affected employees and must also notify the Labour Authority. The rules apply to all cases involving large-scale dismissals, that is, where more than 10% of the workforce will be dismissed.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Consultation should take place with the union or, in the absence of a union, with the affected workers.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must explain the reasons in detail and which workers are affected.

7.3 When and how should consultation take place?

There are no specific rules about how consultation should be done. This will depend on the reasons for redundancies, the number of workers and whether a union exists.

7.4 What must be covered in the consultation?

The consultation must be conducted with a view to reaching agreement with the appropriate representatives about ways of:

- avoiding dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of any dismissals.

8. Is there a requirement to notify the government or any third party?

The employer must submit to the Labour Authority an affidavit stating the reasons it is relying upon. The employer must also submit an expert's report by an authorised auditing company setting out the objective reasons.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

The only criteria that can be used are objective reasons such as;

- force majeure;
- economic, technological or structural reasons;
- dissolution and liquidation by capital restructuring.

The employer must prepare profiles or assessments and the workers who score lowest will be part of the collective dismissal.

10. How long does the large-scale process take?

How long the process lasts depends on the reasons for the dismissals and the number of workers involved. In general the process takes about four months.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

A decision of the Labour Authority may be appealed within no more than three working days. An employee who is unfairly dismissed can claim before the labour courts:

- payment of the legal indemnity; or
- reinstatement.

If the redundancy was discriminatory or for a prohibited reason, the employee may also claim reinstatement.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

A court will only order compensation for loss if the dismissal is unfair.

12.2 Can they suspend or stop the process?

A court may make an order stopping the dismissals if there has been a violation of fundamental rights.

12.3 Can they order reinstatement?

In cases where a dismissal is declared void, the court can order reinstatement.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

There is no exhaustive list of reasons justifying economic or organisational dismissals. However, there must be a decrease in the number of employees doing work of a particular kind or liquidation of a given position. Note that the court has no power to examine a justification based on economic or organisational reasons.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

The employer must identify the pool of employees from which it will select the employee, that is, the professional group affected by the reduction. The professional group will consist of employees who perform the same or an interchangeable role. Selection from the pool of employees to be dismissed must be based on fair, objective and non-discriminatory criteria.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

It is necessary to consult but only when dismissing an employee employed for an indefinite term. The employer must consult the trade union that represents the employee. The employer must explain the reasons for the intended dismissal, including the criteria on which the employee was selected for dismissal. The trade union may then explain its objections to the dismissal.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees receive normal remuneration during the notice period. In some cases the notice period may be shortened and payment made in lieu. The notice period depends on length of service and ranges from two weeks (i.e. for less than six months of service) to three months (i.e. for at least three years of service).

A payment because of an economic or organisational dismissal or other set indemnity

If the employer employs at least 20 employees, dismissed employees are entitled to statutory severance pay depending on length of service, as follows:

- less than two years - one month's salary;
- between two and eight years - two months' salary;
- more than eight years - three months' salary.

Statutory severance pay is subject to a cap of 15 times the national minimum wage at the date of termination. It is open to the parties to agree a better severance package.

Compensation related to loss

If the dismissal is unjustified or violates procedure, the employee may request compensation of up to three months' remuneration or reinstatement, plus remuneration for up to two months of unemployment or the full period of unemployment if the employee is a 'protected employee'. The employee may also seek additional damages.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Additional compensation is typically offered as an incentive for the employee to sign a mutual termination agreement which reduces the risk of the employee appealing to court. Typically, the additional compensation is from one to three months' remuneration.

4. How long does the process take?

Consultation takes up to ten days. The employer should ask the union whether the employee is a member or a protected non-member. The unions have five days to answer. The employer must consult on the reason for dismissal, for another five days. If there are no trade unions, no formal procedure applies.

5. Are any categories of employees entitled to special protection?

A number of categories of employees have special protection, for example, trade union leaders, pregnant employees, employees on maternity leave and employees on sick leave. The protection is not always absolute, as while protected employees may not be dismissed, their terms of employment may be changed (with the exception of salary).

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional procedures for large-scale collective redundancies. The employer must consult with employee representatives and the works council and must notify the regional employment offices. If the dismissal affects more than 50 employees the employer should sign an agreement with the regional employment office. Individual consultation does not apply if the consultation ends with an agreement between the employer and trade unions. Collective redundancies occur if, in a period of 30 days:

- ten or more employees are made redundant in a workforce of up to 99;
- 10% of employees are made redundant in a workforce of 100 to 299;
- 30 or more employees are made redundant in a workforce of 300 or more.

Large-scale redundancies are where at least 50 employees are made redundant in a period of three months.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation must take place with trade unions. In the absence of trade unions, consultation must be conducted with employee representatives elected for the purpose. Additionally, consultation must take place with any works council within the organisation.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must notify the trade unions or the elected employee representatives, in writing, of:

- the reasons for the proposed collective redundancy;
- the number of employees and professional groups to which they belong;
- the professional groups affected;
- the period over which the redundancy is to take place;
- the criteria proposed for the selection of employees to be made redundant;
- the order in which employees are to be made redundant;
- employees' issues connected with the intended collective dismissals (e.g. financial benefits, the method of calculation and assistance in seeking new employment).

The representatives may request further information relevant to the consultation. The law does not specify the scope of information to be disclosed to works councils. However, typically it is the same as for the trade unions or employee representatives.

7.3 When and how should consultation take place?

The consultation procedure should be started approximately one month before serving the first notice of termination. It involves the following steps:

- notification to unions or elected representatives;
- notification to regional employment offices;
- up to 20 days of consultation;
- agreement with unions or the issue of a regulation by the employer.

At the same time, the employer should consult with the works council. If over 50 employees are to be dismissed over three months, the employer should sign an agreement with the relevant government body. The employer can then proceed to terminate the employment of the affected employees.

7.4 What must be covered in the consultation?

Consultation should cover ways to avoid or reduce the collective redundancy. In particular, it should cover employee issues connected with the redundancy including benefits and the possibility of obtaining new qualifications, professional training or other employment.

8. Is there a requirement to notify the government or any third party?

The employer must notify the regional employment offices of large scale dismissals. For redundancies of more 50 employees in three months, the employer must sign an agreement

with the regional employment office concerning assistance to be provided to the dismissed employees, for example, a jointly organised training programme.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Polish labour law does not specify what criteria should be used when selecting individuals for large-scale dismissals. However, the criteria must be objective and non-discriminatory. Specific criteria are subject to consultation between the employer and trade unions or, if there are no trade unions, employees representatives. If agreement is not reached at the end of the consultation the decision is up to the discretion of the employer. It should take into account the opinion of the trade unions or employee representatives.

10. How long does the large-scale process take?

From the start of the consultation process to serving the first notices or signing the first agreements of termination the process takes approximately one to two months. However, the dismissals will not be effective until the notice periods expire.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Each employee who has been served a notice of termination may appeal to the court. If the dismissal is unjustified or violates the process, the employee may request compensation of up to three months' salary or reinstatement plus remuneration for up to two months of unemployment, or the full period of unemployment for protected employees. In some cases the employee may seek additional damages if it is proved that the employee suffered harm because of an intentional violation of law by the employer.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If the dismissal is unjustified or violates procedure, the employee may request compensation of up to three months' remuneration or reinstatement plus remuneration for up to two months of unemployment, or the full period of unemployment if a protected employee. The employee may also seek additional damages.

12.2 Can they suspend or stop the process?

The court has no power to stop the dismissals.

12.3 Can they order reinstatement?

A court can order reinstatement. However, if the employee has been made redundant, the court will likely award compensation instead of reinstating the employee. This does not apply to protected employees, who are almost always reinstated.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

If, within 15 months following the dismissal of employees as part of a collective redundancy, the employer finds it wishes to hire new employees within the same professional group, it must rehire the original employees, provided they have filed an application to be rehired within a year of the termination.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has a reduced need or where there is a closure or relocation and there is:

- a significant anticipated decrease in production or demand;
- economic and financial uncertainty in the organisation or a change in activity;
- changes to production techniques.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific criteria for selection but an employer must act fairly. The employer will identify an appropriate group of employees (i.e. a pool) from which to select employees for redundancy. Typically, the pool will include all employees who perform a particular role and employees whose roles are interchangeable. Having defined the pool, the next stage is to select employees from it for redundancy by means of objective, non-discriminatory and measurable selection criteria. If more than one employee performs the same role, there are mandatory criteria for selection. These include the employee's performance and length of service.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer must consult workplace representatives before a decision is taken and should do so with an open mind. If there is no workplace representation, affected employees can create an ad hoc representative committee, which must be consulted. This committee can be accompanied by an expert designated by the employees. Consultation would typically cover decisions on selection of employees, the basis on which individuals have been selected for potential redundancy, alternatives to redundancy, other employment and the amount of compensation to be paid.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work their notice period. Although the employer can release employees from work, payments in lieu are not lawful. The legal notice period varies from 15 to 75 days, depending on the employee's length of service.

A payment because of an economic or organisational dismissal or other set indemnity

Employees are entitled to remuneration due (e.g. unused annual leave). For redundancy, employees are entitled to a minimum statutory payment depending on the type of contract (i.e. fixed-term or indefinite) and whether the employee was hired before or after 1 November 2011. Statutory pay ranges from 12 to 30 days' base salary plus seniority allowances for each year of service. Part years are prorated. For employees hired after 1 November 2011, there is a cap of 12 months' pay or EUR 121,200. Total severance cannot exceed 12 times the monthly

base salary plus seniority allowances or 240 times the national minimum wage. There may be more generous contractual or discretionary schemes.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, the employee may bring a claim for financial and non-financial compensation, for which there is no statutory limit.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer more than the legal minimum compensation. Employers sometimes use a calculation which mirrors the way in which the statutory redundancy payment is calculated but without applying the statutory cap. Typically, offers are linked to entering into a formal settlement agreement to avoid future claims, usually recorded in the negotiation meeting minutes.

4. How long does the process take?

Although there is no legal minimum period, the consultation process typically lasts between one and two weeks. The length of the process will depend on the suggestions and questions from the employee representatives.

5. Are any categories of employees entitled to special protection?

No employee is wholly protected from redundancy. However, some categories of employees have special protection, such as pregnant women, those who are breastfeeding, employees on parental leave or employees who are candidates, members or former member of unions or social bodies.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

The same rules and procedures apply regardless of the scale or impact of the dismissal. The employer must consult workplace representatives before a decision is taken and should do so with an open mind. If there is no workplace representation, affected employees can create an ad hoc representative committee which must be consulted. This committee can be accompanied by an expert designated by the employees. The same rules apply regardless of the scale or impact of the dismissals.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

An employer must always consult the employees' representatives regardless of the size of the dismissal. Consultation must take place with 'appropriate representatives'. If there are no representatives, consultation is not mandatory. There are three categories of 'appropriate representatives':

- trade-union appointed representatives, if the trade union is recognised;

- existing employee representatives, if appointed or elected by the affected employees for a reason other than consultation and the representatives have the appropriate authority;
- representatives appointed for the purpose of consultation by the affected employees (i.e. an ad-hoc committee).

The last option is the most common in non-unionised workplaces.

7.2 What information must be disclosed to employees and/or their representatives?

An employer must provide the following information in writing to the representatives:

- the reasons for the dismissal;
- the number and professional categories of employees it proposes to make redundant;
- a 'headcount map', describing the organisational sectors;
- the proposed criteria for selecting the employees who may be dismissed;
- the proposed period over which the dismissals are to take effect;
- the proposed method of calculating the amount of any redundancy payments (i.e. other than statutory redundancy pay).

7.3 When and how should consultation take place?

The consultation must take place within five days of communicating the intention to dismiss to the employees or the representatives.

Consultation should be undertaken by the employer with a view to reaching agreement with the representatives and in good faith.

7.4 What must be covered in the consultation?

The process must include consultation with a view to reaching agreement with the appropriate representatives about ways of:

- avoiding dismissals;
- reducing the numbers of employees to be dismissed;
- mitigating the consequences of any dismissals; and
- compensation to be awarded.

8. Is there a requirement to notify the government or any third party?

The employer must report the proposed collective redundancies to the Portuguese Labour Ministry Services (i.e. *'Direção-Geral do Emprego e das Relações de Trabalho'*). The notice must be in writing and give specified details. A copy of this notice must be provided to the employee representatives.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no legal rules regarding employee selection. The criteria must be objective, reasonable and justified, regardless of the size of the dismissal.

10. How long does the large-scale process take?

The duration of a redundancy process does not depend on its size. Redundancy procedures last for a minimum period of one to three months, depending on the specific notice that must be observed. In addition, the negotiation period can add time onto the overall period.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Employees can bring a claim for unfair dismissal in the Labour Court. To defend such a claim successfully the employer must demonstrate the redundancy is genuine and a fair procedure has been followed. If this is not proved, the employee will be entitled to reinstatement to the same business unit, taking into account the employee's professional category and length of service. In the case of organisations with fewer than ten employees or employees with administration or management positions, the court may instead order compensation of between 30 and 60 days of base salary plus seniority allowances, for each year of service, prorated, with a minimum payment of six months. The employee can choose compensation instead of reinstatement. The court will fix the compensation at between 15 and 45 days of base salary, plus seniority allowances, for each year of service. The employee may also claim compensation for damages and salary due if the dismissal is found to be unlawful.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair, the employee may bring a claim for financial and non-financial compensation, for which there is no statutory limit.

12.2 Can they suspend or stop the process?

The court cannot stop dismissals from going ahead, unless an employee files a request for an injunction to suspend the dismissal.

12.3 Can they order reinstatement?

An employee who brings a claim for unfair dismissal in the Labour Court can request reinstatement, which can be enforced.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Generally, dismissals for economic or organisational reasons can be made where there is a reduced requirement for employees or a business closure. However, economic reasons are not a ground for dismissal. Therefore, employers must consider other legal grounds and use economic or organisational reasons as supporting evidence. The most commonly used ground is redundancy.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

In the case of redundancy the employer must carry out a selection process among the employees subject to redundancy. Employees with a higher qualification and work productivity must be given priority to remain at work. If employees have equal qualifications and productivity, priority must be given to employees with dependent family members, employees who have had a workplace injury or professional disease while working, employees doing professional training at the employer's request and disabled war veterans.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer must obtain an opinion from the trade union for redundancies of union members. The union must be notified two months before the dismissal. It is not necessary to consult individual employees before a decision. However, employees and the State Employment Agency must be notified at least two months before the dismissal. The consultation normally covers a discussion about any affected employees who are trade union members and the grounds for and dates of dismissals. The union must give its opinion within seven working days of notification from the employer. If the union does not agree with the decision on redundancy additional consultation must be carried out.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees have the right to work during the notice period. If the employee agrees to be dismissed before the end of the two-month notice period, payment in lieu of notice of average salary pro-rated for the remaining part of the two-month notice period must be paid.

A payment because of an economic or organisational dismissal or other set indemnity

For dismissals for redundancy the employer must pay severance of:

- one month's average salary on the last day of work;
- one month's salary at the end of the second month of unemployment.
- The employer must also pay one month's salary at the end of the third month of unemployment if the employee:
- registered with the State Employment Agency within two weeks of dismissal;

- is unemployed and has not been placed by the State Employment Agency;
- has a report from the State Employment Agency confirming unemployment and the right to this third payment.

Therefore, the maximum severance payment is three months' average earnings.

Compensation related to loss

There is no right to compensation for loss. The employee may bring a case for unfair dismissal. If the court decides that the dismissal was unlawful the employee may be eligible for compensation for the period of absence from work, moral damages if claimed and compensation for court-related expenses.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers sometimes offer more than the legal minimum compensation and agree dismissal with employees by mutual consent. In this case, employers need not comply with the requirements on consultation or notification but need to agree the termination with the employee. It is typical to offer employees slightly higher compensation.

4. How long does the process take?

From the first notification of dismissal either to the employee or trade union the procedure takes two months at a minimum to complete. However, taking into account the process of drafting the documents related to dismissal it may take, on average, around three months.

5. Are any categories of employees entitled to special protection?

The following employees cannot be dismissed for redundancy:

- pregnant women;
- women with children under three;
- single mothers of children under 14 or 18 if disabled;
- individuals bringing up a child under 14 or a disabled child under 18 without a mother;
- sole earners with children under three bringing up three or more minors.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules for notice periods for collective redundancies. A severance allowance must be paid as for individual dismissals. The employer must give notice to the union no later than three months before the dismissal. The rules apply to collective dismissals, that is, if a certain number of employees are dismissed within a certain period of time. The thresholds depend on the grounds for dismissal, the size of the organisation, its location and the industry as follows:

- 50 to 199 employees within 30 days;
- 200 to 499 employees within 60 days;
- 500 or more employees within 90 days;
- 1% of the total number of employees within 30 days where the total is
- fewer than 5,000.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Employers must consult when large-scale economic or organisational dismissals are proposed. Russian law does not provide a procedure for consultation with employees with respect to collective redundancy. However, employees must be notified of the proposed collective redundancy at least two months before the dismissal date. After the decision is taken, the employer must obtain an opinion from the trade union for the dismissal of union members for redundancy. Under the law the trade union must be notified three months before the dismissal date.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must notify each employee and any trade union of the organisation in writing of the date and reason for the redundancy. The trade union must also be notified of the list of employees who are members of the trade union.

7.3 When and how should consultation take place?

The employer must notify existing trade unions three months in advance. The trade union must give its opinion within seven working days of the notice. If the union does not agree with the employer's decision on redundancy, additional consultation within three business days must be carried out. If the employer and union do not reach an agreement, the employer is entitled to dismiss members of the trade union after the three-day consultation period (i.e. ten business days after the notification). However, this does not prevent the trade union from challenging the dismissal with the Labour Inspectorate, or the employee from challenging the dismissal in court.

7.4 What must be covered in the consultation?

The consultation normally includes discussion of the list of affected employees who are union members, grounds and dates of dismissals.

8. Is there a requirement to notify the government or any third party?

The employer must notify the State Employment Agency, in two stages, of the proposed collective redundancy. The first notification is three months before the dismissal. The second is two months prior. The employer must also provide certain information when making the notification.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific rules or criteria about who is selected for large-scale dismissals apart from rules on selection between employees carrying out a particular role.

10. How long does the large-scale process take?

From the first notice of dismissal either to the employee or trade union, the process takes three months at a minimum to complete. However, taking into account drafting the documents related to dismissal it may take an average of around four months to complete.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

The employee may report suspected violations of the redundancy procedure, as well as any other provisions of the labour law, to the Labour Inspectorate, which will consider the case and may order the employer to remedy the breach. The employee may also bring a claim for unfair dismissal. If the court decides the dismissal was unlawful (i.e. an unlawful reason or in breach of procedure) the employee should be reinstated (i.e. if the employee requests). Such a court decision will apply with immediate effect. The employee will also be awarded compensation, on request, for the period of absence from work and for any moral harm suffered. Compensation for the period of absence is generally calculated based on the employee's average remuneration for the last 12 months of employment.

12. What can the court or tribunal order?

12.1 Can they order compensation?

Russian law does not provide for compensation for loss. In the case of a dispute the employee may be entitled to payments for absence from work or moral damages.

12.2 Can they suspend or stop the process?

Theoretically, if there is a risk of a significant increase in unemployment in the region where the organisation is the key employer, a collective dismissal may be suspended.

12.3 Can they order reinstatement?

If the court decides a redundancy was unlawful and the employee specifically requests reinstatement in his or her claim, the court may grant this.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Under Russian law, in the case of staff redundancy it is mandatory for the organisation to offer employees vacant positions (including those involving lower qualifications or salary) available in the organisation or those that may become vacant during the two-month notice period. If there are no vacant positions in the organisation, the employees must be informed in writing. Therefore, the organisation may terminate employees due to staff redundancy only if it is impossible to transfer the employee to another position.

The procedure for redundancy is considered to have a high risk of disputes, as it is complicated and time-consuming. Employees may argue that the statutory procedure was not observed or that the organisation dismissed employees simply to get rid of them. Therefore, once the redundancy procedure is carried out the organisation should avoid having vacant positions similar to those described as redundant or hiring new employees in other job positions with the same scope of functions and responsibilities as the dismissed employees.

There is a separate ground for dismissal of employees for 'organisational reasons'. Dismissal for this reason is possible only when the employer has changed the terms and conditions of the employee's employment unilaterally and the employee refuses to work or fill vacant positions proposed by the employer.

South Korea



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has an 'urgent managerial necessity' to reduce its workforce. Urgent managerial necessity is not defined in statutory law, but generally includes a reduced requirement for employees to do work of a particular kind, reorganisation for insolvency or economic deterioration or because of a business closure.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific criteria but an employer must act fairly. An employer would identify an appropriate group of employees (i.e. a pool) from which to select employees who may be redundant. Typically the pool will be all employees who perform the role and employees whose roles are inter-changeable. Having defined the pool, the next stage is to select employees from that pool for redundancy by means of objective and, if practicable, measurable selection criteria. The law specifically prohibits the use of gender as a criteria for selection of employees to be made redundant.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Korean law requires collective consultation of the workforce, either by consultation with the labour union where the union represents half or more of the workforce, or with a labour delegate elected by a majority of the employees where there is no such union. Consultation would typically cover decisions on selection of employees, the selection criteria, options other than redundancy and alternative employment. Consultation must include discussions in good faith aimed at avoiding job losses. Employers must make every effort to avoid redundancies, which must include considering reduced working hours or salary, job sharing, retraining, voluntary resignation or early retirement packages.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work over the notice period or be paid in lieu of notice. The notice period may be set out in the contract of employment or work rules but is subject to a legal minimum of 30 days.

A payment because of an economic or organisational dismissal or other set indemnity

Except as may have been agreed in the work rules or collective bargaining agreement, there is no mandatory compensation owed to employees by reason of redundancy. It is, however, customary for employers to offer some kind of compensation to employees in cases of involuntary job loss.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, the only remedy available to employees is to seek reinstatement and back pay with interest for the period of unfair dismissal.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer significant packages to encourage voluntary resignation and settlement of claims. Separation packages range from a few months' to several years' compensation depending on various factors, including employees' length of service and the organisation's financial circumstances.

4. How long does the process take?

For voluntary redundancy or early-retirement there is no fixed timeframe. Consultations for involuntary redundancies are subject to a statutory minimum period of 50 days. Large-scale dismissals may be subject to a reporting requirement after the 50-day consultation period has begun, but at least 30 days before the start of dismissals. Late reporting may delay the timeline.

5. Are any categories of employees entitled to special protection?

No employee is wholly protected from redundancy. An employee on maternity leave is protected from termination during this leave and for 30 days immediately thereafter, and an employee undergoing treatment or recuperation from occupational illness or injury is protected from termination during the period of treatment or recovery and for 30 days afterwards.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that can apply in these circumstances. Large-scale redundancies must be reported to the Ministry of Employment and Labour 30 days in advance. The Ministry does not have a formal veto right over the planned redundancies, but commonly attempts to influence the employer to reduce or mitigate the social impact of job losses. The notice requirement may be triggered when an employer intends to make redundant ten or more employees. For workplaces with fewer than 100 employees, the threshold is ten; for workplaces with 100-999 employees, 10% of the workforce; for workplaces with 1000 employees or more, 100.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

The employer must consult in the same way as it is required to do for any involuntary redundancy. Consultation must take place with 'appropriate representatives' of the affected employees. There are two categories of 'appropriate representatives':

- trade union representatives if the trade union represents half or more of the total workforce;

- representatives elected for the consultation, this is the most common option in non-unionised workplaces.

7.2 What information must be disclosed to employees and/or their representatives?

There is no specific information required by law. The employer should provide the following information in writing to the representatives:

- the reason for the proposals;
- the numbers and descriptions of the employees it proposes to make redundant;
- the total number of employees of that description at the organisation in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals including the period over which the dismissals are to take effect; and
- the proposed method of calculating the amount of any redundancy payments other than statutory redundancy pay.

7.3 When and how should consultation take place?

The consultation must take place 'in good time' and the period between the start of the consultation and the date the first dismissal takes effect must be no shorter than 50 days. Consultation must be undertaken by the employer with a view to reaching agreement with the representatives and in good faith.

7.4 What must be covered in the consultation?

The process must include consultation with a view to reaching agreement with the appropriate representatives about ways of:

- avoiding dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of any dismissals.

8. Is there a requirement to notify the government or any third party?

If the redundancies are large-scale, the Ministry of Employment and Labour must be notified. Apart from that, no government or third-party body has the right to notice. Contractual agreements, such as a collective bargaining agreement, may give rise to a notification right.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Just as for involuntary redundancies of any size, no specific criteria are required but the criteria used must be fair and reasonable, taking account of not only the employer's but also the employees' interests — and subject to collective consultation with an appropriate representative of the employees.

10. How long does the large-scale process take?

In a redundancy involving particularly large numbers, the consultation may take longer than the 50 days required by law. In addition to the consultation period, employees must be given 30 days' notice or 30 days' pay in lieu of notice, which may add time onto the overall period in question.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

Employees can bring a claim for unfair dismissal before the National Labour Relations Commission (an administrative and adjudicative body that can hear certain types of labour and employment-related disputes) or the court. To defend such a claim successfully the employer will have to show a fair dismissal. This means that 'urgent managerial necessity' exists, and the employer has made 'every effort' to avoid involuntary dismissals, applied fair and reasonable criteria to select redundant employees, and complied with certain mandatory notice and collective consultation requirements.

Where collective consultation requirements are triggered, but the employer has failed to comply, if the claim is successful, the Labour Relations Commission or the court may order the employees to be reinstated. This would require the employer to start the redundancy process again and to conduct the 50-day consultation required by law.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair, the employee may seek back pay with interest for the period of unfair dismissal.

12.2 Can they suspend or stop the process?

Orders to stop the dismissal going ahead may be possible if the employer and its employees have entered into a pre-existing agreement in which the employer has guaranteed a certain period of time before conducting a redundancy exercise, unless there are exceptional circumstances.

12.3 Can they order reinstatement?

An employee who brings a claim for unfair dismissal to the National Labour Relations Commission can request reinstatement, which is the primary remedy for unfair dismissal. Employees may also claim damages for emotional distress, but awards for such claims are generally small and not of material interest.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Carrying out an involuntary redundancy plan requires the employer to make every effort to avoid involuntary job losses. This means that any employer considering a workforce reduction plan in South Korea must attempt voluntary redundancy first as part of documenting that every effort has been made.

When an employer makes employees redundant based on 'urgent managerial necessity', the law requires that employees made redundant must be given preferential employment

entitlement if the employer intends to hire new workers to fill the positions made redundant in the three years following the redundancies.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic reasons can be made when the organisation's results are negative, such as losses or decreases in income or sales. Further, organisational reasons can include changes in systems and work methods or in the way production is organised. An employee can also be made redundant for technical or production reasons.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific selection criteria but an employer must act fairly and without discriminating on prohibited grounds. The employer must establish a connection between the reasons for the redundancy and the need to make specific staff redundant.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

In the case of an individual economic or organisational redundancy, there is no obligation to follow a consultation procedure. No consultation is necessary when individual redundancies take place.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Following delivery of the notice letter, 15 days' notice must be given before the dismissal takes effect. The employer may choose to make a payment in lieu of notice. During the notice period the employee must continue providing services, although the employee is entitled to spend six hours per week looking for new employment.

A payment because of an economic or organisational dismissal or other set indemnity

Employees affected by economic dismissals are entitled to a severance payment equivalent to 20 days' salary per year of service up to a maximum of 12 months. However, if the employer cannot prove objective redundancy grounds (i.e. economic, organisational, technical or productive), the employees are entitled to receive unfair dismissal severance pay. This should be equivalent to 45 days' salary per year of service before 12 February 2012, and 33 days of salary per year after this date.

Compensation related to loss

There is no automatic right to compensation related to loss. If the dismissal is declared unfair, the employee is entitled to receive severance pay unless the employer reinstates the employee. If violation of a fundamental right is found by the court and the employee proves damages, he or she is entitled to an additional indemnity and reinstatement.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer the legal minimum compensation when a redundancy takes place. However additional compensation may be offered at the discretion of the organisation, based on its financial state, industry practice or its usual practice in order to reach an agreement that avoids the risk of higher severance being imposed by the court.

4. How long does the process take?

Commonly the process takes 15 days. This covers a 15-day notice period following delivery of the dismissal letter. However, the employer may choose to make a payment in lieu of notice.

5. Are any categories of employees entitled to special protection?

Some employees are entitled to special protection. Examples include:

- employee representatives;
- pregnant workers or those on maternity leave;
- workers who have requested certain leave and working time reductions;
- workers who are victims of domestic violence.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There is a specific procedure that must be followed. A consultation period with the workers' legal representatives must be conducted before the organisation takes the final decision on redundancies. The employer must inform the Administrative Labour Authority about the start of the consultation period and the results of consultation. The rules apply where, in a period of 90 days, dismissals affect at least:

- ten workers in organisations that employ fewer than 100 workers;
- 10% of the total workers in organisations employing between 100 and 300 workers; or
- 30 workers in organisations that employ more than 300 workers.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation must take place with the employees' legal representatives.

7.2 What information must be disclosed to employees and/or their representatives?

At the start of the consultation period, the employer must disclose the following information to the employees' legal representatives:

- the specific reasons for the dismissals;
- the number and job classification of affected employees;
- the number and job classification of the workers habitually employed over the previous year;
- the period envisaged for carrying out the dismissals;
- selection criteria to be applied;

- a copy of the communication sent to the employees or to the employees' legal representatives about the intention to start the collective dismissal procedure;
- a list of the employees' legal representatives that will be members of the negotiating body;
- a report explaining the grounds for the dismissals;
- accounting and tax documentation, including technical reports.

Other specific and detailed information may need to be disclosed to the legal representatives, depending on the legal reasons supporting the dismissal.

7.3 When and how should consultation take place?

The employer must first consult with the employees' legal representatives. The consultation must be carried out by a unique negotiating body of no more than 13 employee representatives. Once this negotiating body has been set up, the organisation must notify the employees' legal representatives and the Administrative Labour Authority of the commencement of the consultation period. This communication must be in writing and must include all the information given to the employees' legal representatives.

7.4 What must be covered in the consultation?

Consultation must, as a minimum, deal with possibilities for preventing or reducing the redundancies and mitigating the consequences by means of social support measures such as outplacement measures, training or professional and redeployment activities that could improve employability.

8. Is there a requirement to notify the government or any third party?

The opening of the consultation period must be reported by the organisation to the Administrative Labour Authority. The final decision at the end of the consultation must also be reported.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific rules or criteria, beyond the constitutional requirement that criteria must not be discriminatory. The criteria should be as objective and measurable as possible.

10. How long does the large-scale process take?

The process typically lasts 45 days, as follows:

- the consultation period must last no more than 30 days, or 15 in organisations employing fewer than 50 employees; and
- at least 30 days should elapse between the date the Administrative Labour Authority is notified of the opening of the consultation period and the dismissal date.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

The employees may contest the redundancy. The court will issue a judgment declaring the termination to be fair, unfair or void. The terminations will be declared:

- Fair, if the redundancy grounds under law apply and all legal requirements are met. Severance payments are final and the employee is not entitled to further compensation.
- Unfair, if the redundancy grounds have not been sufficiently proven or the specific requirements have not been met. The organisation may reinstate the employee or pay severance of up to 45 days' salary per year.
- Void, if discrimination or a violation of a fundamental right is established or, in the case of collective redundancies, if there is a serious breach of the procedure, such as failure to provide the legally required information or failure to comply with collective bargaining obligations. Affected employees are entitled to reinstatement with back pay (i.e. an amount equivalent to the salary that accrued between termination and reinstatement).

12. What can the court or tribunal order?

12.1 Can they order compensation?

If the dismissal is declared unfair, the employee is entitled to receive unfair dismissal severance pay. If violation of a fundamental right is declared by the court and the employee is able to prove harm, he or she will be entitled to an additional indemnity plus reinstatement and back pay.

12.2 Can they suspend or stop the process?

The courts cannot stop dismissals from taking place. However, if a redundancy is declared void, the dismissed employees will be entitled to reinstatement with payment of salary owed between the termination date and reinstatement.

12.3 Can they order reinstatement?

In some cases (e.g. serious breach of the required procedure, lack of good faith in negotiations or breach of a fundamental right), collective dismissals will be declared void and the employees will be entitled to reinstatement with payment of salary from the termination date to the judgment.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

When a dismissal letter is delivered, the minimum legal severance payment must be made. A copy of the written notice or a copy of the dismissal letter (i.e. if the organisation chooses to make a payment in lieu of notice) must be given to the employees' legal representatives for information.

For collective dismissals, employers commonly offer more than the legal minimum compensation. The amount will depend on different factors, including the organisation's financial position, industry practice and the organisation's usual practices regarding dismissals. Employers are only obliged by law to pay 20 days' salary per year of service, to a maximum of 12 months.

Sweden



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Economic or organisational reasons for redundancy are generally considered fair and are common in Sweden. Redundancy covers situations where there is no work or where the decisive factors are purely business-related, such as restructuring or re-organisation. Employers have considerable freedom to dismiss for reasons not related to employees personally. However, selection is strictly regulated.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

Swedish employment law has a priority rating for employees based on length of service (i.e. the 'last in, first out' principle). The main rule is that employees with a longer length of service must have priority in redundancy situations over employees with a shorter length of service. This means that employees with longer service facing redundancy may lay claim to a position held by an employee with shorter service provided they have sufficient qualifications for the position.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

No individual right to information or consultation exists. Only the trade unions have the right to a consultation. If the organisation is bound by a collective agreement it must consult the relevant trade unions. If the organisation is not bound by a collective agreement it must consult every trade union with affected members. The consultation should be carried out in two steps. First, the employer and trade unions discuss the financial and technical reasons for the intended restructuring, any alternative measurements and the consequences. Second, the employer consults with the trade union on factors such as who to dismiss and possible relocation.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Depending on the length of service, employees are entitled to between one and six months' notice pay, during which the employee must retain pay and other employment benefits in accordance with employment law. Longer notice periods may apply in collective agreements or individual employment contracts.

A payment because of an economic or organisational dismissal or other set indemnity

Not applicable.

Compensation related to loss

If termination of employment is considered to not have been based on just cause or if it was done in violation of the 'last in-first out' principle, the employee may be awarded economic damages for loss of income in addition to general damages.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Depending on the situation, the employee may be awarded extra compensation amounting between one and several months' salary. This could include situations where the employer wants to avoid a dispute or as a gesture of good will for employees who have been employed for many years.

4. How long does the process take?

Consultations for an individual dismissal based on economic or organisational reasons are normally concluded within one to three weeks.

5. Are any categories of employees entitled to special protection?

Employees with reduced working capacity who have therefore been given special duties by the employer must, under certain circumstances, be given priority for continued work. Further, trade union representatives must be given priority for continued employment, if this is significant for the trade union activities at the workplace.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

The Swedish rules on redundancy apply regardless of the number of affected employees as long as the reasons are of an economic or organisational nature. There are no additional rules. Economic or organisational reasons for redundancy are generally considered fair and are common. Redundancy covers situations where there is no work or where the decisive factors are purely business-related. Employers have considerable freedom to dismiss for reasons not related to employees personally. However, selection is strictly regulated. The same rules apply to all redundancies.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Only trade unions have the right to consultations in Sweden. If the organisation is bound by a collective agreement it must consult with the trade unions party to the agreement. If the organisation is not bound by a collective agreement it must consult with every trade union that has members in the workplace who may be made redundant.

7.2 What information must be disclosed to employees and/or their representatives?

Individual employees do not have a right to information. However, Swedish law regulates what kind of information the employer must disclose to the trade unions before consultation with the unions begins. The following information must be disclosed to the trade unions:

- the reasons for the proposed dismissals;
- the number of affected employees and the employment categories to which they belong;
- the number of employees normally employed in the organisation and the employment categories to which they belong;
- the period of time during which the employer plans to carry out the dismissals;

- the method of calculating any compensation to be paid in connection with dismissals in addition to compensation, either statutory or contained in applicable collective agreements.

7.3 When and how should consultation take place?

Consultations must take place before the employer takes any final decisions to dismiss. Normally consultations are held in between one and three sessions lasting two to six hours each.

7.4 What must be covered in the consultation?

There are no fixed rules about what the consultation must cover. However, the trade unions must be given a fair opportunity to evaluate the proposed decision and to be able to provide necessary input on the proposal.

8. Is there a requirement to notify the government or any third party?

In situations when the employer intends to make five or more employees redundant within one county, it must notify the Swedish Public Employment Service in advance.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Swedish employment law has a priority rating for employees based on length of service (i.e. the 'last in, first out' principle). The main rule is that employees with a longer length of service must have priority in redundancy situations over employees with a shorter length of service. This means that employees with longer service facing redundancy may lay claim to a position held by an employee with shorter service provided they have sufficient qualifications for the position.

10. How long does the large-scale process take?

Normally the process lasts between three to eight weeks not including notice periods.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

If a dismissal is not for a just cause (e.g. it is for false redundancy reasons), the employee may claim financial and punitive damages and reinstatement. An employee who has been dismissed in breach of the order of priority rules (i.e. the 'last in, first out' principle) may claim financial and punitive damages. A breach of the consultation procedure may result in liability to pay damages to the trade unions normally ranging between EUR 5,000 and 30,000 depending on the scale of the redundancy.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If termination of employment is considered to not have been based on just cause or to have been in breach of the 'last in-first out' principle the employee may be awarded economic damages for loss of income in addition to general damages.

12.2 Can they suspend or stop the process?

Neither a court nor a tribunal may stop a dismissal or reorganisation process from going ahead. However, a failure to comply with the consultation procedures may make the employer liable for damages to the trade unions.

12.3 Can they order reinstatement?

A court can order reinstatement, if it finds a dismissal was not for a just cause. Upon the request of the employee the court may declare a dismissal void and the employee reinstated. However, the employer may choose instead to pay additional damages of 16 to 32 months' salary.

Switzerland



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Swiss law allows the employer to make employees redundant in order to reduce headcount.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

Criteria relating to performance or operation are acceptable, whereas criteria such as age, gender, race, nationality and ethnic origin are not permitted. Swiss law also prohibits indirect gender discrimination. For example, if part time workers are discriminated against by being chosen disproportionately for redundancy, and most of them are women, this may constitute indirect gender discrimination. Depending on the circumstances, the employer may have a higher duty of care towards certain employees (e.g. long-serving employees aged 55+), which may have an impact on selection.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

There are no consultation requirements for individual dismissals, unless provided for by an applicable collective labour agreement.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees are entitled to their full remuneration for the whole notice period. The employer can release the employee from the obligation to work at any time during the notice period (garden leave), but this does not affect the employee's remuneration entitlement.

A payment because of an economic or organisational dismissal or other set indemnity

Swiss law does not provide for any right to severance pay upon termination of employment, except for employees aged 50+ with at least 20 years' service. Such employees are entitled to severance of between two and eight months' salary, however, pension benefits will be deducted to the extent they are financed by the employer. Therefore, statutory severance rarely applies in practice. A collective labour agreement may provide an obligation to pay severance.

Compensation related to loss

Swiss law does not oblige the employer to compensate the employee for loss of future earnings. However, the applicable pension fund regulations may oblige the employer to make additional pension contributions if an employee close to retirement age is dismissed.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

It is normal to offer more than the minimum, particularly for long-serving employees whose performance and behaviour is no issue. The termination package is typically tailored to the employee's and employer's individual circumstances. Often, the parties make a termination

agreement following notice of termination. The termination agreement usually provides for a full and final settlement.

4. How long does the process take?

Swiss law does not require a specific procedure when giving individual notice. Therefore, the process of giving notice can be completed quickly.

5. Are any categories of employees entitled to special protection?

Employees cannot be given valid notice of termination during certain times:

- if performing compulsory military or civil defence or alternative civilian service;
- whilst (totally or partially) unable to work due to illness or accident for up to 30 days in the first year of service, 90 days in the second to fifth year and 180 days in the sixth and subsequent years;
- during pregnancy and 16 weeks following birth;
- whilst participating with the employer's consent in an overseas aid project ordered by the federal authority.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to large scale dismissals. The employer must consult with the employee representative body or, if none, with the employees themselves, and must notify the labour office. Large-scale dismissal rules apply if, within 30 days, the employer gives notice of termination for reasons not pertaining personally to the employees which affect:

- at least 10 employees in a business normally employing more than 20 and fewer than 100 employees;
- at least 10% of the employees of a business normally employing at least 100 and fewer than 300 employees;
- at least 30 employees in a business normally employing at least 300 employees.

An employer must additionally hold negotiations with the aim of preparing a social plan if it normally employs at least 250 employees and intends to make at least 30 employees redundant within 30 days. If negotiations fail, a social plan will be established by an arbitration tribunal.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation must take place with the employee representative body or, if none, with the employees themselves.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must provide all appropriate information regarding the envisaged dismissals, and in any event must give written information about:

- the reasons for the large-scale dismissals;
 - the number of employees who may be dismissed;
 - the number of employees normally employed in the business; and
 - the time period within which the employer plans to issue the notices of termination.
- In addition, the employer must send a copy of this written information to the cantonal labour office.

7.3 When and how should consultation take place?

Consultation must take place as soon as the employer has the intention to carry out large-scale dismissals, and in any event before a final decision is made. Providing the required information starts the consultation period. The employer must allow sufficient time for the consultation.

7.4 What must be covered in the consultation?

The employee representative body or, if none, the employees themselves must have the opportunity to make suggestions on how to:

- avoid the envisaged dismissals;
- reduce the number of employees to be dismissed; and
- mitigate the consequences of the dismissals.

The employer is not required to follow any of the proposals submitted during the consultation period, but should consider them in good faith before deciding on the dismissals.

8. Is there a requirement to notify the government or any third party?

At the end of the consultation, the employer must notify the cantonal labour office about the results of the consultation procedure and its final decision, and must provide a copy of the information given to the employee representative body or, if none, to the employees themselves at the beginning of the consultation. Any closure of a business affecting a minimum of ten employees (in some cantons as few as six employees), must be reported to the cantonal labour office.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Criteria relating to performance or operation are acceptable, whereas criteria such as age, gender, race, nationality and ethnic origin are not permitted. Swiss law also prohibits indirect gender discrimination. For example, if part time workers are discriminated against by being chosen disproportionately for redundancy, and most of them are women, this may constitute indirect gender discrimination. Depending on the circumstances, the employer may have a higher duty of care towards certain employees (e.g. long-serving employees aged 55+), which may have an impact on the selection.

10. How long does the large-scale process take?

The law does not provide for a defined consultation period, but according to court decisions, a consultation period of ten to twenty days is normally sufficient.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

For individual dismissals, there is no specific protection against dismissals for economic or organisational reasons. The employee is protected against termination during certain prohibited periods. Notice of termination during such periods is invalid and will need to be served again once the prohibited period has lapsed.

Notices of termination must only be issued after the employee representative body or, if none, the employees themselves have been consulted and their suggestions, if any, have been considered. Any notices of termination issued before observing these rules are deemed unfair and entitle the employees to 'penalty' compensation of up to two months' salary. Intentional failure to notify the cantonal labour office on the closure of a business affecting a minimum of ten employees (in some cantons as few as six employees) can be sanctioned with a fine of up to CHF 40,000.

12. What can the court or tribunal order?

12.1 Can they order compensation?

The court has the power to order compensation.

12.2 Can they suspend or stop the process?

The court can (theoretically) issue an injunction suspending or stopping the consultation process, but this has never yet happened in practice.

12.3 Can they order reinstatement?

Generally, courts cannot order employees to be reinstated but Swiss law provides for one exception. Reinstatement is possible on a successful challenge of a notice of termination given by the employer following gender discrimination proceedings initiated by the employee, unless the employer can prove valid grounds for the termination.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

For large-scale dismissals, it is industry practice to offer certain additional benefits under a social plan, such as severance payments, outplacement services and support for early retirement.

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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made for reasons causing economic loss in the workplace, such as decreases in product sales, closure of a department, reorganisation or a major loss of profit.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There are no specific rules about selection as long as the reason for the dismissal is valid. However, the employer must not discriminate against employees.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

It is not necessary to consult individuals or workplace representatives, such as trade unions, in relation to individual dismissals.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

The employee is entitled to a notice pay in accordance with law. This is calculated based on length of service. The notice periods are set out in law. Unless a longer notice period is set out in the employment agreement, the mandatory notice periods will apply.

A payment because of an economic or organisational dismissal or other set indemnity

There are no indemnities other than severance and notice pay. If the employee has been employed for at least one year, he or she is entitled to severance pay. This is calculated by multiplying the employee's most recent monthly gross salary by the length of service. Salary includes all monetary benefits.

However, the government has set a cap on the amount payable, which is tied to inflation. The cap applies even where the monthly gross salary of the employee exceeds this amount.

If the monthly gross salary of the employee is below the cap, the severance pay must be calculated based on the most recent month's gross salary.

Compensation related to loss

There is no statutory compensation related to loss.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Severance and notice payments constitute the lower limit of compensation payable to the employee. However, the amount may be increased for the benefit of the employee at the discretion of the employer.

4. How long does the process take?

Normally the employee will work during the notice period. However, if the employer does not want the employee to attend work during this period, notice pay must be paid in advance. In such cases, the termination will be valid from when written notice is given to the employee.

5. Are any categories of employees entitled to special protection?

There is no category of employees entitled to a special protection. However employment law states that the employer must act fairly towards all employees.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that apply to the large-scale economic or organisational dismissals. These dismissals are regulated by special legal provisions. Collective dismissals must be reported to the union representatives at the workplace and the Provincial Directorate of the Labour and Work Institute. Notices to the Provincial Directorate of the Labour and Work Institute must be given in writing at least 30 days before the terminations. The rules on collective dismissals apply when a certain number of employees are terminated within a 30-day period, depending on the size of the employer, as follows:

- ten employees in an organisation with 20 to 100 employees;
- 10% of the workforce in an organisation with 101 to 300 employees;
- 30 or more employees in an organisation with more than 301 employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

The employer must notify the union representatives about the dismissals but consultation is not mandatory. However, if there is a collective agreement in place, the employer must discuss the situation with the union representatives. Any consultation should be between union representatives at the workplace and the employer following notification to the employee representatives and the Provincial Directorate of the Labour and Work Institute. However the employer is not obliged to agree to any requests from the union or the government agency. The employer is not bound by the views of the union.

7.2 What information must be disclosed to employees and/or their representatives?

The employer must inform the employees, the Provincial Directorate of the Labour and Work Institute and union representatives of the reasons for the dismissal, the number of employees and groups that will be affected by the dismissals and the period during which the terminations will take place.

7.3 When and how should consultation take place?

The law provides for a 30-day period for notifications to be made, but no consultation is required by law.

7.4 What must be covered in the consultation?

If a consultation takes place, it would normally cover ways in which the collective dismissal could be avoided or minimised and ways to mitigate the adverse effects of the dismissal. A document evidencing that the meeting was held should be prepared after the negotiations.

8. Is there a requirement to notify the government or any third party?

The employer must notify the Provincial Directorate of the Labour and Work Institute and any union representatives about a collective dismissal.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no rules or criteria about who is selected for large-scale dismissals. However, the employer must act objectively.

10. How long does the large-scale process take?

Notice must be given in writing at least 30 days before the terminations. Notice periods apply to collective dismissals and the period may be extended depending on whether the notice periods are granted to the employees or the employees are paid in lieu.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

The employee may bring a claim to be reinstated if he or she claims that there is no valid reason for the termination and the employee benefits from additional protection. The additional protection starts once the employee has completed six months of employment, where the total number of employees is 30 or more and the employee is not deemed to be the employer's representative. Employees on fixed-term employment contracts are not entitled to bring a claim for reinstatement. There is no provision for claims for monetary or non-monetary damages.

12. What can the court or tribunal order?**12.1 Can they order compensation?**

The employer pays all the employee's entitlements at the time of the termination and no additional compensation is stipulated by law.

12.2 Can they suspend or stop the process?

Dismissals cannot be stopped by a court or tribunal during the process.

12.3 Can they order reinstatement?

If the court finds that there was no valid reason for a termination, it will deem it void and the employer must reinstate the employee within one month or pay four to eight months' salary. The employee must also be paid other benefits accrued during the period of unemployment, to a maximum of four months.

Ukraine



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made because of changes in production and labour caused by, for example, liquidation, reorganisation, bankruptcy or production changes to the organisation, including when an organisation is suffering from a downturn in its economic or financial performance.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

There is a statutory requirement to give priority to employees with higher qualifications and productivity. Where employees have equal qualifications and productivity, priority is given to employees who:

- have two or more dependants;
- are sole income earners in the family;
- have long and consistent work experience in the organisation;
- study at certain educational institutions while working;
- are combatants or disabled veterans;
- are inventors or industrial designers;
- suffer from industrial injuries or occupational diseases;
- have been deported and returned to Ukraine within five years;
- were military service members within the last two years.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

The employer is not required to consult individuals but must notify affected employees no later than two months prior to the dismissal. If the employee is a member of a trade union, the employer must inform and consult the trade union. Before it can dismiss, the employer must obtain the trade union's consent to the dismissal in all cases except liquidation of the company. Consultation would typically cover ways to prevent the dismissal or to minimise its consequences. Consultation with a trade union would typically cover the reasons for the decisions to select particular employees for dismissal, possible special statutory protections, guarantees the employee may obtain, options other than redundancy and alternative employment.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work during their notice period and cannot be paid in lieu. The notice period is two months.

A payment because of an economic or organisational dismissal or other set indemnity

An employee dismissed for economic or organisational reasons has the right to a statutory redundancy payment in the amount of not less than one month's average salary.

Compensation related to loss

There is no right to compensation related to loss. If a dismissal is unfair, the employee may bring a claim and, if successful, be reinstated. The employee may recover compensation for the period of forced unemployment, up to a year's average salary.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer more than the legal minimum compensation. The employer usually either gives the employee a two-month notice period or asks the employee to sign a settlement agreement. Usually, employers like employees to sign a settlement agreement in order to avoid the risk of future claims.

4. How long does the process take?

Taking into account the obligations of the employer to notify the trade union and the employee and to obtain the trade union's consent, the process takes approximately three months.

5. Are any categories of employees entitled to special protection?

Dismissals cannot be carried out in cases of:

- pregnancy;
- women with children under three, or children under six who have specific medical needs;
- single mothers with children under 14 or disabled children under 18;
- employees who have been called for military service, for up to a year.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that can apply in these circumstances. The employer must report the dismissals to the local state employment centre. The rules apply to dismissals made within one month of:

- ten or more employees in an organisation with 20 to 100 employees;
- 10% or more of employees in an organisation with 101 to 300 employees.

The rules also apply to dismissals within three months of 20% or more of employees, irrespective of the total number of employees.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Large-scale dismissals are not subject to any special rules regarding consultations.

7.2 What information must be disclosed to employees and/or their representatives?

Not applicable.

7.3 When and how should consultation take place?

Not applicable.

7.4 What must be covered in the consultation?

Not applicable.

8. Is there a requirement to notify the government or any third party?

The employer must notify the local state employment office no later than two months before a large-scale dismissal. The notification must be in the form of a written report on an official form. Within ten days of the dismissals, the employer must submit a further report to the state authority regarding the dismissed employees.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

Large-scale dismissals are not subject to any special rules regarding selection of employees for dismissals for redundancy. General rules apply.

10. How long does the large-scale process take?

Although a large-scale redundancy process involves an additional obligation to inform the local state employment office, the process does not take longer than the ordinary redundancy process. It takes approximately three months.

C CHALLENGES**11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?**

Employees can bring a claim for unfair dismissal. To defend such a claim successfully, the employer will have to prove the dismissal was fair. If the employer fails to inform and consult the trade union or to give the employee a two-month notice period, the court may change the date of the dismissal to meet the statutory notice requirement. If the employer fails to obtain the trade union's consent, the court will suspend the proceedings to ask for confirmation from the trade union.

If the employer fails to follow the statutory redundancy procedure, for example by dismissing employees who are specially protected, dismissing those who have a preferential right to remain at work or failing to offer other available jobs, the dismissal could be deemed unlawful by the court. The employee may then be reinstated and receive compensation for the period of forced unemployment.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair, the employee may bring a claim and, if successful, be reinstated. The employee may recover compensation for the period of forced unemployment up to a year's average salary.

12.2 Can they suspend or stop the process?

It is the sole right of the employer to decide whether to start a reorganisation process and the courts cannot question whether such a decision was reasonable.

12.3 Can they order reinstatement?

The court has the power to order that the employee be reinstated. Such orders are common and must be immediately enforced. In addition, it can decide to pay the employee his or her average salary for the period of forced unemployment, to a maximum of one year.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

A failure to report, or a late report to the local state employment office, leads to a fine of four times the minimum salary set on the date of dismissal.

United
Kingdom



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Dismissals for economic or organisational reasons can be made where an organisation has a reduced requirement for employees to do work of a particular kind, where there is a business closure and on relocation.

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria for who is selected?

There are no specific rules or criteria on selection but an employer must act fairly. An employer would identify an appropriate group of employees (i.e. a pool) from which to select those who may be made redundant. Typically the pool will be employees who perform the role and employees whose roles are interchangeable. Having defined the pool, the next stage is to select employees from that pool for redundancy by means of objective and, if practicable, measurable selection criteria.

2.2 Is it necessary to consult individuals (or workplace representatives such as unions) before a decision and what would consultation normally cover?

Individuals must be consulted before a decision is taken. It is good practice, but not mandatory, to allow an individual to be accompanied by a colleague or trade union representative. Some employers are party to collective agreements with unions on consultation. Consultation would typically cover decisions on selection of employees, the basis on which the individuals have been selected for potential redundancy, options other than redundancy and on alternative employment. It must be conducted with an open mind.

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

Employees must work their notice period or be compensated or paid in lieu. The notice period is set out in the contract of employment but subject to a legal minimum of one week's notice for each year of service up to 12 weeks.

A payment because of an economic or organisational dismissal or other set indemnity

Employees with at least two years' continuous service are entitled to a statutory redundancy payment. This is based on years of service and age. Employees receive a week's pay (but capped for 2015/16 at GBP 475) for each year of service under 41 with a 50% uplift for each year at 41 and over. A maximum of 20 years' service can be taken into account. Someone earning £30,000 per year who is aged 29 and has worked for four years would receive £1,900 (i.e. four times GBP 475). In addition to a statutory redundancy payment, there may be a more generous contractual or discretionary scheme.

Compensation related to loss

There is no automatic right to compensation related to loss. If a dismissal is unfair, the employee may recover compensation of a year's pay (capped in 2015/16 at GBP 78,335). If a redundancy is discriminatory or for a prohibited reason (e.g. because the employee made a protected disclosure) there is no cap on compensation levels.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers commonly offer more than the legal minimum compensation. Employers sometimes use a calculation which mirrors the way in which the statutory redundancy payment is calculated but without applying the statutory cap to a week's pay. Typically offers are linked to signing a formal settlement agreement to avoid future claims.

4. How long does the process take?

Assuming the process for large-scale dismissals does not apply, a consultation process typically lasts between two and four weeks. The length of the process will be affected by the number of suggestions and questions from the employee.

5. Are any categories of employee entitled to special protection?

No employee is wholly protected from redundancy. However, an employee on maternity leave has an automatic right to be offered any suitable alternative role.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so in what circumstances do they apply?

Special rules on large-scale dismissals apply when an employer is proposing 20 or more dismissals for redundancy (or another reason not related to the individual) within any period of 90 days. These rules (known as collective consultation obligations) will be triggered when the 20 or more dismissals are at one 'establishment'. An 'establishment' is normally determined by reference to geographical and organisational factors.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

Consultation must take place with 'appropriate representatives'. There are three potential categories:

- Trade union representatives if the trade union is recognised in respect of any of the affected employees.
- Existing employee representatives if these representatives were appointed or elected by the affected employees for some reason other than the specific consultation and they have appropriate authority to be consulted.
- Representatives directly elected for the purpose of the consultation by the affected employees. This will be necessary if neither of the preceding categories applies and is the most common option in non-unionised workplaces.

7.2 What information must be disclosed to employees and/or their representatives?

An employer must provide the following information in writing to the representatives:

- the reason for the proposals;
- the numbers and descriptions of the employees it proposes to make redundant;
- the total number of employees of that description at the establishment in question;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals including the period over which the dismissals are to take effect;
- the proposed method of calculating the amount of any redundancy payments other than statutory redundancy pay;
- the number of agency workers working temporarily for and under the supervision and direction of the employer;
- the parts of the business in which the agency workers are working; and
- the type of work the agency workers are carrying out.

7.3 When and how should consultation take place?

The consultation must take place 'in good time' and the period between the start of the consultation and the date the first dismissal takes effect must be no shorter than the following minimum periods:

- 45 days if the employer is proposing to dismiss 100 or more employees within a 90-day period; and
- 30 days if the employer is proposing to dismiss between 20 and 99 employees within a 90-day period.

Consultation must be undertaken by the employer with a view to reaching agreement with the representatives and in good faith.

7.4 What must be covered in the consultation?

The process must include consultation with a view to reaching agreement with the appropriate representatives about ways of:

- avoiding dismissals;
- reducing the numbers of employees to be dismissed; and
- mitigating the consequences of any dismissals.

8. Is there a requirement to notify the government or any third party?

The employer must send notification of proposed collective redundancies to the Secretary of State for Business, Innovation and Skills (BIS). The notice must be in writing and give specified details. A copy of this notice must be provided to the representatives.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

There are no specific rules. The approach to selection and criteria will be the subject of consultation.

10. How long does the large-scale process take?

There are minimum time periods for the consultation process, but in a redundancy involving particularly large numbers, the consultation may well take longer than the minimum period of 30 or 45 days. In addition to the consultation period, employees must be given notice, which can increase the total time taken.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

On an individual basis, employees with two years' or more continuous service can bring a claim in respect of unfair dismissal in the Employment Tribunal. To defend such a claim successfully the employer would have to show that the redundancy was genuine, a fair procedure had been followed and that the dismissal was otherwise fair. Where collective consultation requirements are triggered, but the employer has failed to comply, the Tribunal may make a 'protective' award of up to 90 days' gross pay to each of the affected employees. The purpose of this award is to punish employers for the failure. Failure to notify the Secretary of State for Business Innovation and Skills of the collective redundancies is a criminal offence with a maximum fine of GBP 5,000. However, there have been no reported prosecutions.

12. What can the court or tribunal order?

12.1 Can they order compensation?

If a dismissal is unfair, the employee may recover compensation of a year's pay (capped in 2015/16 at GBP 78,335). If a redundancy is discriminatory or for a prohibited reason (e.g. because the employee made a protected disclosure) there is no cap on compensation levels.

12.2 Can they suspend or stop the process?

The court cannot order the dismissals or reorganisation to be suspended or stopped.

12.3 Can they order reinstatement?

An employee who brings a claim for unfair dismissal in the Employment Tribunal can request reinstatement. Orders are unusual and, if made, cannot be enforced though there is then additional compensation payable.

United States



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A ECONOMIC OR ORGANISATIONAL DISMISSALS - GENERAL

1. We want to reduce headcount – are we allowed to do it?

Plant closures, reductions in the workforce, mergers, acquisitions and reorganisations generally permit dismissals for economic or organisational reasons, as long as the dismissals do not violate anti-discrimination laws (e.g. covering age, sex, national origin, race and other protected characteristics).

2. We want to reduce headcount – selection and consultation

2.1 Are there any rules or criteria about who is selected?

In a unionised workforce, a typical union collective bargaining agreement will require redundancies to be made in order of seniority. This can vary between overall site seniority, departmental or 'work classification' seniority. Regardless of whether the workplace is unionised, employers must not discriminate in the selection process.

2.2 Is it necessary to consult before a decision and what would consultation normally cover?

Employers must provide notice and an opportunity for the unions to bargain with the employer. Equally, employers must be prepared to bargain with the unions. The effects of the decision to dismiss will be discussed. In relation to organised or represented employees, negotiations generally include severance pay, recall and transfer rights for affected employees and outplacement assistance. The decision to dismiss may also be discussed (e.g. the economic need for the reduction).

3. How much does it cost to reduce headcount?

3.1 If employment is terminated, what severance or compensation are employees eligible for:

Notice pay

For unionised employees, mandatory compensation or severance payments depend upon the terms of the collective agreement. Typically, however, these issues are addressed in negotiations with the unions. There is no statutory severance pay, other than the state or federal requirements that apply to large scale dismissals.

A payment because of an economic or organisational dismissal or other set indemnity

There is no statutory indemnity payment. However, indemnities are generally covered by the collective agreement or in negotiations with the unions.

Compensation related to loss

There is no legal entitlement to compensation related to loss, other than as specified in state or federal notice provisions.

3.2 Is it normal to offer more than the legal minimum compensation? If so, what is typical?

Employers may offer more than the minimum notice or payments in lieu. The amount is at the discretion of the employer. It is common for employers to offer one week's severance pay for

each year worked in addition to any statutory notice in exchange for a waiver of all potential claims.

4. How long does the process take?

Whether for legally mandated collective negotiations or for unrepresented employees, significant redundancy decisions and the resulting process typically take from 60 to 90 days to complete effectively and in accordance with law or union collective bargaining obligations.

5. Are any categories of employees entitled to special protection?

Certain categories of employees enjoy greater protection, depending on their protected class. The classes include age, sex, national origin and race. In redundancies involving older workers (i.e. over the age of 40) federal law requires special notice, including the provision of information regarding the age and classification of employees, both those retained and those selected for redundancy.

B LARGE-SCALE ECONOMIC OR ORGANISATIONAL DISMISSALS

6. Are there any special rules about large-scale dismissals and if so, in what circumstances do they apply?

There are additional rules and requirements that may apply in the case of large scale dismissals. The employer must provide a notice to governmental (i.e. state and local) and union officials stating, among other things, the names and classifications of affected employees, with a notice to employees of a person at the employer to contact with any questions or issues associated with the dismissals. Under federal law, when a workforce reduction involves the dismissal of 50 or more employees in a 90-day period, the large scale dismissal rules apply. Therefore, if an employer dismisses 30 employees, for example, on 1 June, ten employees on 1 July, and 11 additional employees on 1 August, the notice provisions apply to all dismissed employees. State laws may vary regarding the 90-day period.

7. Consultation on large-scale dismissals – what rules are there?

7.1 Who is consulted?

If employees are represented by a union, there is a duty in law for the employer to negotiate with the union.

7.2 What information must be disclosed to employees and/or their representatives?

In union contract negotiations regarding dismissals, a union will typically demand and the employer must provide, information including:

- the reasons for the dismissals;
- the names, job classifications, rates of pay, date of recruitment, benefits information (i.e. insurance, accrued sick leave and annual leave, health insurance and retirement plan information) for all employees.

7.3 When and how should consultation take place?

Formal negotiations with the union should take place sufficiently prior to dismissals being effected to enable all outstanding issues regarding the workforce reductions to be resolved. Unionised employers will want an agreement with the union covering the issues.

7.4 What must be covered in the consultation?

Negotiations may be required regarding the decision itself if the decision is based upon labour costs. Negotiations must be conducted in 'good-faith'. 'Effects' bargaining typically involves negotiations over the amount of severance, recall rights, releases of claims by employees, job training, outplacement assistance and transfer or reassignment to other facilities of the employer.

8. Is there a requirement to notify the government or any third party?

For dismissals of 50 or more employees there is a requirement to inform other bodies. These typically include the Designated State Coordinator, the chief local government official (e.g. the Mayor of the affected community), the head of the labour organisations which represent affected employees, and depending upon state laws, other designated officials.

9. Are there any rules or criteria about who is selected for large-scale dismissals?

If employees are unionised, collective bargaining agreements typically provide that any redundancies should be conducted in reverse seniority order (i.e. most recent hires are the first to be let go). Reductions are typically by job classification seniority, depending upon collective bargaining agreement provisions. If an employer is not unionised, there are no rules or criteria regarding dismissals. However, an employer must avoid discriminating on the basis of protected criteria, such as age, race, gender and national origin. Employers must ensure that such protected groups are not disproportionately affected under federal and state anti-discrimination laws.

10. How long does the large-scale process take?

The process typically takes approximately 60 to 90 days. If union negotiations are involved, the process is likely to take closer to 90 days or longer, depending upon the collective bargaining process.

C CHALLENGES

11. What legal challenges and claims can be made against an employer dismissing staff for economic or organisational reasons?

If the dismissals are governed by state or federal law, claims challenging compliance may be brought in a state or federal court. If the employees are unionised, the unions may bring challenges in court about compliance issues. The unions may also bring unfair labour practice claims before the National Labour Relations Board (the federal government agency responsible for enforcing the relevant collective bargaining law) alleging a failure or refusal by the employer to engage in 'good faith' negotiations regarding the dismissals. In addition, a union may bring a challenge under the grievance or arbitration provisions of any existing collective bargaining agreement that contains provisions about reductions. There are three exceptions to compliance with federal notice requirements:

- unforeseeable business circumstances that are not reasonably foreseeable;
- the 'faltering company' exception; and
- natural disasters.

Employers should seek advice regarding the application of any of the exceptions to statutory notice provisions, given that legal challenges frequently arise from them.

12. What can the court or tribunal order?

12.1 Can they order compensation?

A court can require compensation for loss depending on the circumstances surrounding the dismissal. For example, if notice provisions are not followed, a court may award compensation to employees up to the statutory minimum (e.g. 60 days' pay plus benefits). Penalties and legal fees may also be awarded, again, depending upon the circumstances.

12.2 Can they suspend or stop the process?

Usually, a court or tribunal will not be able to make an order stopping dismissals. However, extraordinary relief may be granted by the appropriate court by injunction. This depends on the circumstances of the case or can be in response to a petition to the federal courts by the National Labour Relations Board.

12.3 Can they order reinstatement?

An order reinstating employees would normally only be granted in court if an injunction prohibiting the reduction has been granted. In unfair labour practice proceedings before the National Labour Relations Board, such an order would be expected. Typical orders in such cases require reinstatement, back-pay and the posting of an appropriate notice to employees.

D OTHER IMPORTANT POINTS

13. Is there anything else we need to consider?

Given the complexity of the issues addressed under federal or state employment and anti-discrimination laws as well as under the law for unionised employers, there are a number of additional points that can and should be considered by employers contemplating large-scale economic dismissals, as well as for reductions involving a smaller number of employees. These include a before and after analysis of factors such as age, national origin, sex and race of affected and unaffected employees to ensure compliance with anti-discrimination laws. Accordingly, the employer should consult with legal counsel regarding such actions as far in advance as possible.

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