Austria

Effects of non-compliance with dismissal regulations

Phase	Labour Constitution Act (ArbVG); Employees Act (AngG); General Civil Code (ABGB)
Native name	Arbeitsverfassungsgesetz (ArbVG); Angestelltengesetz (AngG); Allgemeines Bürgerliches Gesetzbuch (ABGB)
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

105 (ArbVG); 29 (AngG); 1162b (ABGB)

Description

Upon the request of employees, works council or employee representatives are entitled to apply to the court within one week after having been notified of a (collective) dismissal and objected to it (e.g. in cases were the employer did not inform the works council before dismissals, unfair dismissals on social grounds, membership in trade union etc.). Employees can also challenge the dismissal at court themselves within two weeks after after having been informed, regardless of whether the works council has objected to or approved the dismissal ([§ 105 ArbVG]). The legal challenge of a dismissal at court on the grounds of the dismissal being 'socially unjustified' is not possible after the works council has approved the dismissal (§ 105 (6)).

If the employer dismisses a white collar worker ([§ 29 AngG]) without a valid reason, the worker is entitled to all wages s/he would have received up to the initially agreed end of the employment relationship or under consideration of the correct application of the notice period.

If an employer fails to provide the works council with relevant information in the case of redundancies the dismissal is legally invalid.

Commentary

There is no established case law, but as legal provisions are unequivocal on this subject, all known cases in the sphere of operation of the Workers' Chamber Vienna were resolved in the employees' favour without lawsuit. The employer's economic risk in case of disregard is considerable: if after court procedures lasting one year (and maybe longer, if all rights of appeal are utilised) the continuing existence of the employment relationships was stated, all wages for these employees would have to be paid retrospectively without them having worked during the course of the procedures. Most companies would have to be sold at this stage due to lack of liquidity.

Each party (employer and employee) has to bear its own costs in the event of a lawsuit, regardless of the outcome.

Additional metadata

Cost covered by	Employee Employer
Involved actors other than national government	Works council Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Austria: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Belgium

Effects of non-compliance with dismissal regulations

Phase	Law of 13 February 1998 regarding measures in favour of employment (so-called 'Renault Law'); Collective Agreement n°109 of 12 February 2014 on justified dismissal
Native name	Loi du 13 février 1998 portant des dispositions en faveur de l'emploi dite loi Renault /Wet van 13 februari 1998 houdende bepalingen tot bevordering van de tewerkstelling (Wet Renault); Convention collective de travail no. 109 du 12 février 2014 concernant la motivation du licenciement/Collectieve arbeitsovereenkomst nr. 109 van 12 februari 2014 betreffende de motivering van het ontslag
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Act of 13 February 1998: articles 62-70; Collective Agreement nr. 109 of 12 February 2014: article 7.

Description

The national legislation makes it possible to take action against employers who fail to comply with the information and consultation requirements of the employee representatives (works council in the first place) specified in collective dismissal regulations.

In case of collective redundancy (corresponding to cases where, within 60 days, there are at least 10 dismissals in companies with 20-99 employees, at least 10% in companies with 100-299 employees, and at least 30 dismissals in companies with 300 or more employees), if workers and/or unions' representatives consider that the employer fails to comply with

such requirements (such as information and consultation procedures), objections can be launched to the regional employment office during the procedure or during the 30 days waiting period. During this period, the employer cannot proceed to any layoff. If no objections are expressed during this period, the law assumes that the employer has respected the necessary requirements and the employer is allowed to proceed with the collective dismissal at the end of it. However, if objections regarding the information and consultation procedure are expressed, the regional employment office may extend the waiting period up to 60 days in order to allow time to find a solution. If objections are more related to non-compliance with the collective dismissal regulations, they may be expressed to the labour court, extension may apply here as well.

The main sanction that can be used involves halting the dismissal of workers or even reinstatement, although this happens very rarely, as in practice unions and employers most of the time quickly go to the next step of bargaining a 'social plan' to obtain (extra) severance payments. However, as soon as a complaint is made during the adequate period, the notice period is adjourned.

Collective Agreement nr. 109 formalises the right of an employee formalises the right of an employee to know the reasons that have led to his or her dismissal, and the right to a restitution in case of an apparent unreasonable dismissal. Failure of the employer to to fulfil the request of an employee to know the reasons of their dismissal is sanctioned with a fine equivalent to two weeks of pay of the employee involved (Art. 7). If a dismissal of an employee is deemed unreasonable, it is sanctioned with a fine equivalent to three to seventeen weeks of pay, depending on the degree of unreasonableness (Art. 9).

Commentary

In the period from January 2022 to June 2022, 26 technical business units initiated an information and consultation procedure.

In the period from January 2021 to March 2021, 36 technical business units initiated an information and consultation procedure.

Between January 2020 to December 2020, 103 technical business units initiated an information and consultation procedure.

Between January and September 2019, 61 companies started an information and consultation procedure.

In 2018, 87 companies announced an intention to proceed with collective dismissals.

The period January to December 2017 was a historically low year both in terms of the number of layoffs announced (3829) and the number of proceedings initiated (62).

From January 2016 until December 2016, 118 companies started an information and consultation procedure, involving 12,042 employees. In total, 83 companies have finalised the procedure, as communicated by the Ministry of Labour. This ministry has to be notified when a company starts such a procedure of collective dismissal.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Belgium: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Bulgaria

Effects of non-compliance with dismissal regulations

Phase	Labour code, Employment promotion act
Native name	Кодекс на труда, Закон за насърчаване на заетостта
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code: Articles 344-346 (disputing dismissal legality); 359, 360, 362 (labour disputes); 399, 404, 405a, 407, (general labour inspectorate authorisation); 412a; 413; 414; 415; 415a, b, c, d (administrative penalties for labour legislation violations); Employment Promotion Act: Chapter five

Description

The labour code, in paragraph 1 item 9 (new - SG 52/04, in force from 01.08.2004, amend. - SG 48/06, in force from 01.07.2006) of its additional provisions, gives a definition and thresholds regarding collective dismissals. A collective redundancy refers to:

- at least 10 dismissals within 30 days or at least 20 dismissals within 90 days in companies with 20-99 employees.
- In companies employing between 100 and 299 employees, a collective redundancy refers to 10% of the workforce (within 30 days);
- in those with 300 or more employees, the figure is 30 dismissals (within 30 days).

Employers can justify redundancies on the grounds of a reduction in business activity or plant or branch closure.

The labour code provides for consultations with trade unions or worker representatives at least 45 days before collective dismissals. Worker representatives can lodge a complaint in

case of collective dismissals with the general labour inspectorate of the Ministry of Labour and Social Policy. Employees are also entitled to appeal dismissals as unlawful at court. Legal proceedings for labour disputes are free of charge for employees.

Section IV of the labour code includes provisions for disputing dismissal lawfulness.

The procedure on collective dismissals is regulated in chapter five of the Employment Promotion Act. This procedure requires the employer to notify employees, trade unions (or worker representatives) in the company and the regional labour office 30 days before the date of dismissals. This notice must include the reasons, the number of employees to be dismissed, their jobs and the period when dismissals will take place.

The fines that the general labour inspectorate may impose on employers depend on the gravity of violations and vary from BGN 1,500 to BGN 30,000 (€765–€15,306).

Cases for which the execution of dismissals requires a preliminary approval by the general labour inspectorate or by the trade union, and such an approval has not been requested or has not been given prior to dismissal, the court revokes the dismissal as unlawful on that ground solely, without further examination of the labour dispute.

The procedure and fines are in force only in case of collective dismissals.

Commentary

The effects, procedure, employer's and employee's rights in case of non-compliance with collective dismissal regulations are fixed in multiple sections of the labour code. The central control function is devoted to the general labour inspectorate.

The generally accepted case law of the supreme court of cassation stipulates that if the employer had not served this notice or actually had, but started dismissals before the expiry of 30 days from serving such notices, the collective dismissals are deemed illegal. In such cases the court rules the dismissals as null and void and restores employees' jobs.

The amendments of the labour code were discussed by the national tripartite cooperation council where the social partners (trade unions and employer associations) approved the proposed amendments regarding collective dismissals.

Additional metadata

Cost covered by	Employer

Involved actors other than national government	Public employment service Trade union Other Court
Involvement (others)	General labour inspectorate
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Bulgaria: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Croatia

Effects of non-compliance with dismissal regulations

Phase	Labour Act 93/2014, 127/17, 98/19, 151/22, 64/23
Native name	Zakon o radu 93/2014, 127/17, 98/19, 151/22, 64/23
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 137 (4, 5, 6), 229 (1.49)

Description

In the case of business transfer

Previous employers are obliged to inform new employers in writing, fully and accurately, about the rights of employees whose employment contracts are being transferred. In case of failure to comply, the previous employer is charged with fines ranging from €8,090 to €13,270 for employers who are legal persons and €920 to €1,320 for employers who are natural persons (article 229, 1, 2). Where the mentioned offence is committed in respect of a minor worker (younger than 18 years), the fine shall be double the amount prescribed (article 229, 2,15). According to article 226, referring to the article 137 (6,7), the previous employer is obliged to notify in writing, timely and prior to the date of transfer, the works council and all employees affected by the transfer about the transfer to a new employer. The referred notification must contain information on: • date of transfer of the employment contracts; • reasons for the transfer of the employment contracts; • legal, economic and social implications of the transfer for the employees; • any measures envisaged in relation to the employees whose employment contracts are being transferred. During labour inspections, an inspector verbally informs the employer about his or her decision and instructs the latter to perform, within the time limit determined by the inspector, the activities of consultation with the works council on important matters

regarding employees' social and business conditions.

Consequences of minor offences by employers

A fine ranging from €1,320 to €3,980 is imposed on the employer (legal person) for concluding an employment contract in which the duration of the probationary period or the duration of the traineeship is longer than permitted by law (article 53, 3). If the employer is a natural person, the responsible staff member who holds the legal responsibility shall be fined for an amount ranging from €530 to €790. Where the referred offence is committed against an underage employee, the amount of the fine is doubled.

Consequences of serious offences by employers

An employer is charged from €8,090 to €13,270 if among others: 1. He or she does not keep records of workers and working hours or does not keep them in the prescribed manner, or if he does not submit data on workers and working hours at the request of the labor inspector (Article 5) 2. He or she temporarily assigns his or her employee to a company that is not related to him or her in terms of the special regulation on commercial companies, or assigns him or her for a duration longer than a continuous six months, or assigns him or her without an agreement and written consent of the employee to the agreement (Article 10, paragraph 3) 3. In the case when the employment contract is not concluded in writing, before starting work, he or she does not issue a written confirmation of the concluded contract to the worker (Article 14, paragraph 3) 4. He or she does not provide the employee with a copy of the employment contract and a copy of the mandatory pension and health insurance application within the prescribed time limits (Article 14, paragraph 5) 5. He or she concludes a work contract at a separate workplace for tasks for which he or she may not conclude it (Article 17, paragraph 4) 6. He or she directs his or her employee, who, within the framework of temporary and occasional cross-border provision of services, to work abroad in a company related to him or her in the sense of a special regulation on commercial companies without the written consent of the employee (Article 18, paragraph 5) 7. Does not submit to the worker a copy of the application for mandatory health insurance during the period of work abroad to the worker before going abroad, if he or she is required to provide this insurance according to a special regulation (Article 18, paragraph 7) 8. A contract on additional work is concluded with a worker who works on jobs with special working conditions in accordance with the regulations on occupational health and safety, a worker who works in reduced working hours according to Article 64 of this Act, and a worker who, according to the special regulation on pension insurance, account insurance for an increased duration (Article 18.a paragraph 2.) 9. He or she concludes a contract with the employee on additional work with contracted working hours for a duration longer than prescribed (Article 18.b paragraph 4.) 10. The work of a worker who performs additional work, and the working time schedule is

not determined as unequal, lasts longer than eight hours per week, including overtime, or if the work of a worker who performs additional work in an unequally determined working time schedule lasts longer than 16 hours per week , including overtime work (Article 18.b paragraph 5.) 11. In a period of four consecutive months, or six months, if this is agreed in a collective agreement, it determines the work of the worker in additional work that would last longer than the average eight hours per week, including overtime (Article 18.b paragraph 7.) 12. He or she determines an unequal work schedule of the worker in additional work without his written consent on voluntary consent to work longer than eight hours per week or if, at the request of the labor inspector, he or she does not submit a list of workers who have given a written statement on voluntary consent to such work (Article 18. b paragraphs 10 and 12) 13. He or she employs a person younger than 15 or a person aged 15 and older than 15 and younger than 18 who attends compulsory elementary education or if he allows the work of children and minors who attend compulsory elementary education (Article 19 and Article 19.a paragraph 3.) 14. In jobs related to work and carrying out activities with children and minors, he employs a person who has been legally convicted of one of the criminal offenses against sexual freedom, sexual abuse and exploitation of a child, which before they were committed, were prescribed by law or international by law, or criminal proceedings are being conducted against her for the aforementioned offenses, or she does not prevent contact with a child or a minor to a person for whom she has knowledge that there is an obstacle (Article 19.b paragraphs 1 and 3) 15. if he employs a minor without the written authorization of his legal representative or the approval of the authority responsible for social welfare affairs (Article 20, paragraphs 1 and 2) 16. He or she employs a minor in jobs that may endanger his safety, health, moral order or development, or if he employs him before the prior determination of his medical capacity (Article 21, paragraphs 1 and 3) 17. He or she refuses to employ a woman due to pregnancy or, contrary to the provisions of this Act, because of pregnancy, birth or breastfeeding of a child, in the sense of a special regulation, offers her an amended employment contract under less favorable conditions (Article 30, paragraph 1) 18. During pregnancy, use of maternity, parental, adoptive and paternity leave or leave which in terms of content and method of use is identical to the right to paternity leave, work half-time full-time, work half-time full-time for increased child care, leave pregnant workers, leave of a worker who has given birth or a worker who is breastfeeding a child and leave or work half-time for the care and nursing of a child with severe developmental disabilities in accordance with a special regulation, i.e. within 15 days from the day the pregnancy ends or use of these rights, cancels the employment contract of a pregnant woman or a worker who uses some of these rights (Article 34, paragraph 1) 19. To a worker who is temporarily unable to work due to an injury at work or an occupational disease, due to treatment or recovery, cancels the employment contract ... 47. The dismissal is not in writing, is not explained or if it is not delivered to the employee (Article 120) 48. The employment certificate, in addition to information on the type of work and

the duration of the employment relationship, indicates something that would make it difficult for the worker to enter into a new employment contract (Article 130, paragraph 3) 49. In the case of transferring an employment contract to a new employer, he does not fully and truthfully, in writing, inform the new employer about the rights of workers whose employment contracts are being transferred (Article 137, paragraph 4).

Commentary

Although fines are prescribed in detail, the procedure for employees to report to competent labor inspection authorities is not touched upon in the law, making the control mechanisms for these measures weak. In addition, there are no objective criteria on the choice of the appropriate amount of fines within the range provided (lowest, middle, highest). According to the report by the labor inspectorate for 2018, around 110 in 2,756 cases (4%) of violations of provisions involved employers that did not provide a notice of dismissal in writing, failed to explain the grounds for dismissal or failed to hand over the notice of dismissal to the employee. The report by the labor inspectorate for 2019 is not anymore publicly available, but according to the unofficial information from the inspectorate, the situation regarding the number of cases did not change in 2019. The structure of violations is not particularly specified in the Report by the Inspectorate for 2021 (Izvještaj Inspekcije za 2021), but it looks like there were no significant changes.

The purpose of the transfer of the employment contract is to preserve the continuity of the worker's employment relationship so that he or she retains all acquired rights as if he had continuously worked for the new employer. In order for employment contracts to be transferred to a new employer, the conditions prescribed by the Labor Act must be met, and in that case the transfer of a part of the company to a new employer does not constitute a justified reason for the termination of the employment contract. Therefore, the admissibility of the termination can be challenged in court. A workers' employment contract that is not related to the performance of an economic activity or part of an economic activity that is transferred to a new employer cannot be transferred to a new employer (Gović Penić, 2019).

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Works council Other

Involvement (others)	Labour inspection authorities
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Croatia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Cyprus

Effects of non-compliance with dismissal regulations

Phase	Collective Dismissals Law of 2001 (Law 28(I)/2001); Termination of Employment Law, 1967 (Law 24/1967) as amended
Native name	N. 28(I)/2001 - Ο περί Ομαδικών Απολύσεων Νόμος του 2001; N. 24/1967 - Ο περί Τερματισμού Απασχολήσεως Νόμος του 1967, όπως τροποποιήθηκε
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 13 of the Collective Dismissals Law (Law 28(I)2001); Article 27, 28 and 29 of the Termination of Employment Law (Law 24/1967)

Description

The legislation specifies various fines upon employers for failing to comply with the legislation related to dismissals.

Collective Dismissals Law According to Article 13 of the Collective Dismissals Law, an employer who in case of collective dismissals (within 30 days, dismissals of at least 10 workers in firms with 21-99 employees, 10% in companies with 100-299 workers or 30 employees in firms with 300 or more staff) fails to consult with employees' representative and/or does not provide to them all necessary information and/or violates the obligation to provide notification to the Minister of Labour and Social Insurance is guilty of an offence. In case of conviction, employer may be subjected to a fine up to €1,708.

An employer who proceeds to collective dismissals before 30 days have elapsed since the Minister of Labour and Social Insurance has been notified is guilty of an offence. In case of conviction, employer may be subjected to a fine up to €3,417.

Termination of Employment Law Provisions of the Termination of Employment Law apply to all dismissals. The law provides for two categories of sanctions: a) sanction which relate to dismissals regulations or transfer regulations and b) sanction which relate to payments from the redundancy fund.

The first group of sanctions relates to the right of redundant employees to a certificate of employment describing the length and the nature of employment and without unfavourable comments against the redundant employee (Article 8), as well as the right of employees to a written and on time notification in case of transfer to a another employer, even if the terms and place of employment do not change (Article 15A). The failure of an employer to comply with these provisions are considered as offences and may lead to fines of up to €427.50 (Article 28) and €1,282.50 (Article 29A) respectively. The failure of an employer to provide a notification to the Minister of Labour, Welfare and Social Insurance in case of intended redundancies (Article 21) is also qualified as an offence and may lead to fine of up to €427.50 (Article 29).

The second group of sanctions relates to violations of redundancy fund provisions. Any person who knowingly or negligently submits false payment claims, make any false oral or written statements or presents any manipulated documents to the redundancy fund is guilty of an offence and in case of conviction may be subject to a fine of up to €769.50 and/or imprisonment of up to six months.

Commentary

According to Labour Relations Department records no criminal charges have ever been placed against employers for non-compliance with the dismissals regulations.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Cyprus: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Czechia

Effects of non-compliance with dismissal regulations

Phase	Law No. 251/2005 Coll., Labour Inspection Act ; Law No. 262/2006 Coll., Labour Code
Native name	zákon č. 251/2005 Sb. zákon o inspekci práce; zákon č. 262/2006 Sb., zákoník práce
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

§25 Labour Inspection Act, §48 - §73a, (§62 collective dismissals) Labour Code

Description

In the event of an employer not complying with legislation, the labour authorities can impose a fine of up to €74,100 (CZK 2 million). If the employer does not conclude a wage agreement in writing, an agreement to complete a job or an agreement to perform work, the fine could be up to €370,400 (CZK 10 million).

Employers must inform the public employment service and trade union or works council about a collective dismissal. Terminations of employment in the context of a collective dismissal (within 30 days, dismissals of at least 10 workers in companies with 20-100 employees, at least 10% in firms with 101-300 employees or 30 workers in larger firms) are not invalid just because the employer failed to deliver to the competent labour office a written report of its decision on the collective dismissal or did not inform about it the relevant trade union or a works council.

If an employer fails to comply with the legal requirements, the employees can address a complaint to the regional labour inspectorate to conduct the inspection in the company or sue in court.

From the point of view of the employee who was laid off illegally, in the Czech legislation there are no differences regarding collective or individual dismissals.

Commentary

The Labour Code does not include penalty for shortcomings concerning dismissals. It is resolved instead by the Labour Inspection Act.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Works council Other Court
Involvement (others)	Labour inspectorate or court
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Czechia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Denmark

Effects of non-compliance with dismissal regulations

Phase	The Danish Act on Collective Redundancies (Consolidation Act no. 291 of 22 March 2010)
Native name	Bekendtgørelse af lov om varsling m.v. i forbindelse med varsling af større afskedigelser (LBK nr 291 af 22/03/2010)
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 11

Description

The legislation specifies that employers must pay fines and compensation to employees amounting to 30 days' pay if they fail to comply with the provisions on negotiating and notifying works council and labour authorities in relation to collective dismissals (within 30 days, dismissals of at least 10 workers in companies with 21-99 employees, at least 10% in companies with 100-299 workers and at least 30 dismissals in larger firms).

In those cases where at least 50% of a workforce of 100 or more employees is being made redundant, the compensation will be eight weeks' pay in the event of non-compliance with the legislation.

Should employers fail to comply with legal requirements, employees have recourse to the regional employment council in cases where advance notification has not been given.

Penalties or sanctions typically take the form of fines for employers, and compensation for employees.

Commentary

Most employers comply with the requirements and the number of infringements is low.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Regional/local government Works council
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Denmark: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Estonia

Effects of non-compliance with dismissal regulations

Phase	Employment Contracts Act
Native name	Töölepingu seadus
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment Contracts Act §100, 128-129

Description

If an employer or employee gives advance notice of cancellation of a employment contract later than provided by law or a collective agreement, the employee or the employer has the right to receive compensation to the extent to which he or she would have been entitled to upon adhering to the term for advance notice.

Failure by an employer to perform the obligation to inform and consult upon collective dismissals (within 30 days, dismissal of at least 5 employees in companies with up to 19 staff, of at least 10 employees in firms with 20-99 staff, at least 10% in firms with 100-299 staff or at least 30 employees in larger firms) or upon transfer of the undertaking is punishable by a fine of up to €32,000.

If an employer fails to comply with the requirements of legislation, employees can take the case to a labour dispute committee or to court.

Penalties can be either financial (see above) or the termination of employment contracts can be declared unlawful and the employer is then required to continue to fulfil the terms of the contract.

Commentary

Thresholds are applicable in case of collective dismissal, while they do not apply upon transfer of enterprise.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Labour dispute committee
Thresholds	Affected employees: 5 Company size: 19 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Estonia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Finland

Effects of non-compliance with dismissal regulations

Phase	The Employment Contracts Act (55/2001), Cooperation Act (1333/2021), Act on Cooperation within Government Agencies and Institutions (1233/2013), Act on Cooperation [...] within Municipalities (449/2007)
Native name	Työsopimuslaki (55/2001), Yhteistoimintalaki (1333/2021), Laki yhteistoiminnasta valtion virastoissa ja laitoksissa (1233/2013), Laki työnantajan ja henkilöstön välisestä yhteistoiminnasta kunnissa (449/2007)
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

55/2001: Ch. 12, Sec. 2. 1333/2021: Ch. 6, Sec. 44-45. 1233/2013: Ch. 7, Sec. 43-45. 449/2007: Sec. 21-23

Description

The Employment Contracts Act sets the regulation for compensation for an employer's wrongful termination of an employment contract. An employer who terminates an employment contract against the conditions set by legislation, or who has caused the employee to end the contract through disrespecting employment legislation, may have to reimburse the ex-employee with a sum corresponding to a minimum of three and a maximum of 24 months' salary. For employee representatives, the sum may correspond up to 30 months' salary. The reimbursement sum will depend on:

- the estimated length of unemployment and estimated loss of earnings;
- the duration of the employment relationship;

- the employee's age and employability/employment prospects within a relevant field and at a relevant level of education;
- the employer's procedure in terminating the contract;
- in case of a fixed-term contract, the remaining period of the contract;
- any potential motive for termination originating in the employee;
- the general circumstances of the employer and the employee;
- other relevant aspects.

Furthermore, if cooperation negotiation procedures during restructuring are not respected, the employer may be liable to pay an affected employee a compensation of up to €35,000 (indexed). This applies to private companies with 20 employees or more. For local governments the maximum compensation level is €30,000 and for state employers and employees, the maximum compensation sum is €34,140. The compensation sum will depend on the degree of neglect towards negotiation procedures, the general conditions of the employer, and the duration of the employee's employment contract as well as the nature of the measure that affects him/her. An employer can in addition be liable to a fine by, in other ways, breaching the obligations to co-operate.

Employees can take action against non-compliant employers through trade union representatives and the courts. The indemnification expires if no action is taken within two years of the employer's breach against contract termination conditions.

Commentary

Trade unions generally offer legal support to their members in case of employer non-compliance with dismissal regulations.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Court
Involvement (others)	None

Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Finland: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

France

Effects of non-compliance with dismissal regulations

Phase	Labour code
Native name	Code du travail
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

L.1235-1 to L.1235-5, L.1235-10 to L.1235-17, L. 1238-2, L.1238-4, R.1238-5

Description

Void dismissal

Collective redundancies can be void by an administrative court, if the latter recognises shortfalls in the Job-saving plan or if an administrative authority did not validate or approve the Job-saving plan at all. In case the administrative authority validated or approved the employment protection plan without stating sufficient reasons, its decision might be invalidated by the court. According to article L. 1235-16, the administrative authority has the possibility to disclose a clear statement of reasons for the validation of the plan within 15 days following the court decision, making collective redundancies not void.

In the two conditions above, where collective redundancies are void, the judge can order the employment contract's continuation and the employee's reinstatement, which the employer cannot oppose, except if the reinstatement is impossible (for instance, when the company is closed).

In case of reinstatement in the company, the employee is entitled to the payment of a compensation corresponding to the salary lost during the period between the dismissal

and the reinstatement. However, the compensation cannot be higher than the remuneration that the employee would have been paid for during the period.

If the reinstatement is impossible, the employee is entitled to:

- legal severance pay, compensation in lieu of notice and holiday pay; and
- specific compensation paid by the employer which corresponds to at least six months of salary if the employee has two years of service in the company and if the company has more than 11 employees.

If the employer does not meet these two criteria, the employee will receive a compensation corresponding to the damage suffered.

Unjustified dismissal

Individual and collective dismissals are deemed unjustified, that is without a fair or serious reason, if the judge declares economic grounds for the dismissal to be non-existent. In this case, the judge can propose the employee's reintegration, if neither the employer nor the employee are opposed to the measures. Otherwise, the employee is entitled to a specific compensation.

Article L. 1235-3 sets both minimum and maximum amounts of compensation in case of unfair dismissals. These amounts are set depending on both the employee's years of seniority and the size of the company's workforce. The underlying principle are the following: given an equal level of seniority, an employee working in a company with a bigger workforce benefits from a higher minimum compensation level that the one working in a company with a smaller workforce; given an equal size of the workforce, an employee with more years of seniority benefits from a higher minimum compensation level that the one with less years of seniority. The minimum and maximum compensation levels refer to the employee's monthly gross remuneration.

Employees can challenge their dismissals before a tribunal within a year following the termination of their employment contract.

Irregular dismissal

Individual and collective dismissals are considered irregular, if the procedure has not been respected. The lack of compliance does not prompt the withdrawal of the dismissal. Indeed, the law does not provide for reinstatement in case of a mere irregularity in the procedure but it recognises employees a compensation for damages that is equal to a month's salary. According to article L. 1235-2, the compensation applies to all employees, irrespective of the size of the workforce and the years of seniority.

Criminal sanctions

According to article L. 1238-2, failure to consult with the works council for collective redundancies of at least 10 employees is subject to a fine up to €3,750 times the number of employees affected by the offense. Pursuant to article L. 1238-4, failure to notify collective dismissals to the administration is subject to a fine equal to €3,750 times the number of employees affected by the offense.

Commentary

In the past, compensation for unjustified dismissals corresponded to at least six months of remuneration, if the employee had two years of seniority in the company and if the company had a workforce of 11 employees or more. With a view to increase predictability for employers, previous amendments to the labour code introduced indicative standards (This scale is commonly known as the "barème Macron") for the evaluation of damages in case of unfair or irregular dismissals. Judges needed to refer to these standards in case of judicial dispute. Compensation in these cases varied between a month of salary for employees with less than a year of seniority and 21.5 months of salary for employees with over 43 years of seniority. The latest amendments to the labour code introduce the current minimum and maximum amounts of compensation.

According to the government and employer associations, this set-up aims at further increasing predictability and at reducing costs for employers, who might have been ordered to a consistent compensation. In turn, the current arrangement increases the flexibility of the labour market and incentivises employers to hire without facing the risk of penalty in case of unjustified dismissal.

The amendments raised a huge debate in connection with legal disputes resulting in several labour court rulings. One legal issue raised relates to the conformity of the new legal formulation with international conventions, namely article 10 of the ILO Convention 158 and article 24 of the European Social Charter. Positions from labour courts varied: some found article L. 1235-3 to violate the relevant international conventions, while others did not. In this matter, the Court of Cassation released its opinion, whereby it considers the reform to be compliant with relevant international conventions.

On 11 May 2022, the Court of Cassation (appeals no. 21-14.490 and 21-15.247) ruled that :

- The compensation scale for employees dismissed without real and serious cause is not contrary to Article 10 of Convention 158 of the International Labour Organisation.
- The French court cannot set aside, even on a case-by-case basis, the application of the scale in the light of this international convention.

But since then, some courts of first instance and appeal courts have continued to dispute whether the scale complies with international law and have refused to apply it.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Works council Other Court
Involvement (others)	Labour inspectorate
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), France: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Germany

Effects of non-compliance with dismissal regulations

Phase	Employment Protection Act
Native name	Kündigungsschutzgesetz
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment Protection Act, article 3, 17, 18 and 23

Description

Collective redundancies (dismissal of at least 6 employees in companies with 21-59 workers, at least 10% (or 26) in companies with 60-499 workers, or at least 30 dismissals in larger firms) have to be announced to the public authorities and only come into effect if they are approved by the authorities within three weeks time. The law does not foresee any penalties for the employer in case of non-compliance.

Since 2004, the employment protection act only applies to establishments with a minimum of ten full-time workers on permanent contracts. Workers working in the establishment for at least six months who object to their individual dismissal on social grounds may turn to the works council for complaint. The works council shall consult with the employer to find a solution.

In case a works council is not in place the individual worker has to appeal to the labour court.

Commentary

The above derives from the Employment Protection Act as the Work Constitution Act does not foresee the case of non-compliance as the employer is not obliged to conclude a balance-of-interests agreement. However, a social plan has to be agreed upon, either by the works council and management or by an arbitration committee.

In 2021, the Employment Protection Act was amended. More works' council election initiators were granted better protection against dismissals. The new rules apply to the first six employees listed in the works council election as well as works' council election initiators. They cannot be dismissed on ordinary grounds until the invitation to the election meeting. Dismissals are only possible due to extraordinary, special reasons.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council Court
Involvement (others)	None
Thresholds	Affected employees: 6 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Germany: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Greece

Effects of non-compliance with dismissal regulations

Phase

-Law 4808/2021 (Government Gazette A'/101/19.06.2021), "For Labour Protection - Establishment of an Independent Authority "Labour Inspection" - Ratification of Convention 190 of the International Labour Organization on the Elimination of Violence and Harassment in the World of Work - Ratification of Convention 187 of the International Labour Organization on the Framework for the Promotion of Safety and Health at Work - Incorporation of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the balance between professional and private life, other provisions of the Ministry of Labour and Social Affairs and other urgent regulations", as amended by Law 5053/2023 (OGG A' 158/26.09.2023) -Law 4611/2019: Settlement of debts to social security institutions, the tax administration, and first-level local authorities; pension regulations for civil servants, and other insurance and pension provisions, strengthening the employees' protection and other provisions (OJHR A 73/17.05.2019 and A 75/22-05-2019); Law 3996/2011 reforming the labour inspection body, social security regulations and other provisions; Law 3850 of 2010 ratifying the code of laws related to occupational safety and health; Law 1387/1983 on collective dismissals

Native name	-Νόμος 4808/2021 (ΦΕΚ Α' 101/19.06.2021), "Για την Προστασία της Εργασίας - Σύσταση Ανεξάρτητης Αρχής «Επιθεώρηση Εργασίας» - Κύρωση της Σύμβασης 190 της Διεθνούς Οργάνωσης Εργασίας για την εξάλειψη της βίας και παρενόχλησης στον κόσμο της εργασίας - Κύρωση της Σύμβασης 187 της Διεθνούς Οργάνωσης Εργασίας για το Πλαίσιο Προώθησης της Ασφάλειας και της Υγείας στην Εργασία - Ενσωμάτωση της Οδηγίας (ΕΕ) 2019/1158 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Ιουνίου 2019 για την ισορροπία μεταξύ της επαγγελματικής και της ιδιωτικής ζωής, άλλες διατάξεις του Υπουργείου Εργασίας και Κοινωνικών Υποθέσεων και λοιπές επείγουσες ρυθμίσεις", όπως τροποποιήθηκε απο το Νόμο 5053/2023 (ΦΕΚ Α' 158/26.09.2023) -Νόμος 4611/2019: Ρύθμιση οφειλών προς τους Φορείς Κοινωνικής Ασφάλισης, τη Φορολογική Διοίκηση και τους Ο.Τ.Α. α΄ βαθμού, Συνταξιοδοτικές Ρυθμίσεις Δημοσίου και λοιπές ασφαλιστικές και συνταξιοδοτικές διατάξεις, ενίσχυση της προστασίας των εργαζομένων και άλλες διατάξεις (ΦΕΚ Α' 73/17.05.2019 και Α' 75/22-05-2019); Νόμος 3996/2011 ΑΝΑΜΟΡΦΩΣΗ ΤΟΥ ΣΩΜΑΤΟΣ ΕΠΙΘΕΩΡΗΣΗΣ ΕΡΓΑΣΙΑΣ, ΡΥΘΜΙΣΕΙΣ ΘΕΜΑΤΩΝ ΚΟΙΝΩΝΙΚΗΣ ΑΣΦΑΛΙΣΗΣ ΚΑΙ ΑΛΛΕΣ ΔΙΑΤΑΞΕΙΣ; Νόμος Υπ' Αριθ. 3850 / 2010: Κύρωση του Κώδικα νόμων για την υγεία και την ασφάλεια των εργαζομένων; Νόμος1387/1983 – Έλεγχος Ομαδικών Απολύσεων και άλλες διατάξεις
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

-Law 4808/2021, Article: 66, 'Protection from dismissals', as amended by Law 5053/2023, Article17: 'Protection from dismissal and burden of proof - Amendment of Article 339 of the Individual Labor Law Code (Article 18 of Directive (EU) 2019/1152)' -Law 4611/2019, Chapter VI: Provisions concerning the labour inspectorate’s organisation: Article 60 Classification of labour law infringements; Article 62 Penalties in the event of opposition to inspections by the labour inspectorate; Law 3996/2011 Article 28, paragraph 4; Law

3850/2010 Article 10; Law 1387/1983 Article 6

Description

-In previous years, if a dismissal was found invalid by Court, the employer had to re-employ the dismissed employee and pay wages in arrears for the interim period. By virtue of article 66: Protection from dismissals, Law 4808/19.06.2021: 1. The termination of the indefinite-term dependent labour contract by the employer is invalid if: it is due to discrimination against the employee, or as a retaliation based on sex, race, color, political opinion, religious or philosophical beliefs, descent, national or ethnic origin, sexual or sexual orientation, age, gender identity or characteristics, disability, or membership or not in a trade union; it is done as a reaction to exercising a legal right of the employee; *contravenes another special provision of the law, in particular when it comes to dismissal (i.e. due to exercise of rights in case of violence and harassment, pregnant, lactating women, as well as the father of the newborn, during annula leave, trade union officials, members of workers' councils, the members of the special negotiating team, the European Works Council and the representatives of the employees, who exercise their duties in the context of the procedure for the information and consultation, when there is no compelling reason for, etc.). 1.a. Employees who consider that the termination of the contract by the employer is a reaction to exercising their legal right , may request notification of the reasons for the dismissal from their employer. In this case, the employer is obliged to respond in writing and documented. 2. If the employee proves before a Court facts capable of supporting the belief that the dismissal was made for one of the reasons in paragraphs 1 and 1a, it is up to the employer to prove that the dismissal was not made for the stated reason. 3. If the dismissal is for a reason, other than the ones of par. 1 and 1a, the Court instead of any other consequence upon request of either the employee or the employer, awards in favour of the employee an amount of additional compensation, which cannot is less than three months' regular wages nor more than twice the legal compensation, due to termination at the time of dismissal. The request is submitted by the employee or by the employer at any stage of the trial, in the first or second instance of jurisdiction. When determining the amount of additional compensation, the court takes into account, in particular, the intensity of the employer's fault and the property and financial situation of the employee and the employer. 4. The employee who pleads a defect in the complaint, according to par. 1 and 1a, is entitled to request, instead of the recognition of the nullity of the complaint and the occurrence of the consequences of the nullity, the award of additional compensation. 5. If the conditions of paragraph 3 of article 5 of Law 3198/1955 (A' 98) [termination of the employment relationship is considered valid, as long as it has been made in writing, the due compensation has been paid and the employment of the dismissed person has been registered in the payroll maintained for the I.K.A (Social Insurance Foundation -now EFKA) or the dismissed person has been insured]

were not met during the termination of the dependent labour contract, and with the exception of the payment of the severance pay, the validity of the termination is asserted, as long as the employer cover the formal omission within a period of one month from the service of the relevant action or from the submission of a request to resolve a labour dispute. In the event that the fulfillment of the specific conditions is done after the above deadline, this fulfillment is considered as a new complaint and the previous one as non-existent. When the amount of the compensation falls short of the amount of the legal compensation, due to an obvious error or reasonable doubt as to the basis of its calculation, the invalidity of the termination is not recognized, but the completion of the termination compensation is ordered.

-In the event of non-compliance with the legislation, labour authorities can declare collective dismissals null and void, and severance payments may be required for dismissed workers. 'Collective dismissal' refers to dismissals affecting more than 6 employees in companies with 20 to 150 employees and to those affecting 5% of the workforce or 30 employees in companies with more than 150 employees. There are no specific provisions for non-compliance with dismissal regulations relating to cases of individual dismissals. No specific provision is in place to enable employees to take action against non-compliance: the same regulation applies as in any other case of termination of employment. The criteria according to which administrative penalties are imposed are the following: the seriousness of the offense; any repeated non-compliance with the instructions of the competent bodies; any similar offenses for which penalties have been imposed in the past; the degree of fault; the number of employees; the size of the undertaking; the employment regime; the number of employees affected; the inclusion of the undertaking in one of the categories (for example, agriculture, transport, storage and communication, metal mining, electricity, gas and steam) provided for under article 10 of Law 3850/2010 (OJHR A 84). In cases where obstruction of inspection takes place, may it be false data provision or denied entry to the premises, such shall be punished by imprisonment of at least one year or by a fine of at least €900 or both these penalties. A decision of the Minister of Labour, Social Security, and Social Solidarity shall categorise the violations, specify the criteria, determine the method of calculating the amount of the fine, and provide for cases where the amount of the fine may be adjusted.

Commentary

-Law 4808/2021 brought about the most drastic change in labour relations in recent decades with radical changes in the law of dismissal. In previous years, if a dismissal was found invalid by Court, the employer had to re-employ the dismissed employee, and pay wages in arrears, for the interim period. With article 66: the right of the employee to keep his job in case of illegal and especially invalid dismissals is practically limited to certain only

cases (when the dismissal is due to adverse discrimination, when it is retaliatory, and when the prohibition or invalidity is specifically recited by law). In any other case, that is, in any case of abusive termination, the employer can bring the cure of the invalidity, which occurs in principle, by paying compensation due to faulty (illegal) dismissal ("amount of additional compensation").{The amount of additional compensation will vary from three months' wages up to twice the statutory compensation due to termination at the time of dismissal. This additional compensation is, by its legal nature, different from legal dismissal compensation (Law 2112/1920, Law 3198/1955). The Law does not subject it directly to the deadlines of Article 6 of Law 3198/1955 (any employee's claim arising from a void termination of the employment relationship is deemed inadmissible, as long as the relevant action was not notified within a three-month disruptive period from the termination of the employment relationship.This provision applies only to the termination of employment relationships). The employee has the same right, instead of invoking the nullity and the consequences of lateness, in any case, i.e. even when the defect in the notice does not allow the remedy of nullity at the initiative of the employer}; the dismissal carried out without observing the general formal conditions of its validity (article 5, par. 3, Law 3198/1955) is included in the cases of par. 1, of article 66, with the consequence that the employee retains the job of. {This applies absolutely when the employer does not comply with the standard conditions regarding the payment of the due compensation. The nullity remains irremediable in this case as well. With regard to the observance of the other two general formal conditions of article 5, par. 3, of Law 3198/1955 (document form and insurance of the dismissed), the employer is given the possibility of curing the invalidity by covering the formal omission within one month of the delivery of a relevant lawsuit or the submission of a request for a labor dispute. If the formal defect is covered after the impractical expiration of the above deadline, this filling is considered as a new complaint, and the previous invalid one is considered as non-existent}; *finally, article 66, par. 2, of Law 4808/2021, as amended by article 17, of Law 5053/2023 entails a reversal of the burden of proof. If a dispute occurs, due to an employee's dismissal on grounds of a requested or received leave, or flexible regulation, and/or exercised relevant rights, the employee needs to cite facts, before a Court, for being dismissed due to one of the prohibited reasons. In this case, the employer has the burden of proving that the dismissal is due to reasons other than the ones prohibited.
-Only a few cases have been brought for non-compliance. However, decision no. 1070/2010 of the Supreme Court is very important. According to this decision, the sanction provided by Law 1387/1983 in article 6, stating that 'collective dismissals made in violation of the provisions of the law are void', is the most appropriate and effective measure to prevent the employer from non-observance of the procedure for collective dismissals.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court Other
Involvement (others)	Labour Inspectorate, Greek Ombudsman, Employers - Employees or representatives
Thresholds	Affected employees: 7 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Greece: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Hungary

Effects of non-compliance with dismissal regulations

Phase	Act I of 2012 on the Labour Code
Native name	2012. évi I. törvény a Munka Törvénykönyvéről
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Chapter 44, Articles 65 (3), 82-84, 273 (1)

Description

In general, the employer shall be liable to provide compensation for damages resulting from the wrongful termination of an employment relationship. Compensation for loss of income from employment payable to the employee may not exceed 12 months absentee pay (a fixed salary for paid leave).

If an employment relationship was wrongfully terminated, the employee is entitled to severance pay. In lieu of severance payment, the employee may demand payment equal to the sum of the absentee pay which would have been due for the notice period when his/her employment was terminated by the employer. In addition, at the employee's request, the court shall reinstate the employment relationship in cases when:

- it was terminated in violation of the principle of equal treatment;
- it was terminated in violation of the prohibition of abuse of rights (an addition to Article 83, entered into force on 1 January 2023);
- it was terminated during pregnancy, maternity leave, paternity leave, parental leave (additions to Article 65 (3), entered into force on 1 January 2023), or leave of absence taken without pay for caring for a child;

- it was terminated during any period of actual reserve military service; in case of women, if it was terminated while receiving treatment related to a human reproduction procedure, for up to six months from the beginning of such treatment;
- the requirement to obtain the consent of the trade union regarding the dismissal of a union representative (Article 273 (1)) was disregarded;
- the employee served as an employees' representative at the time when their employment relationship was terminated; and
- the employee successfully challenged the termination of the employment relationship based on the former mutual consent between the employer and the employee concerned, or on their previous legal declaration (to accept the termination based on mutual consent).
- the employment relationship is terminated unlawfully by the employer, the employee shall be eligible to a compensation corresponding to the sum of the absentee pays that he/she would have been entitled to for the notice period.
- a fixed-term employment relationship is terminated unlawfully, the employee shall be eligible to a compensation corresponding to the sum of the absentee pays due for the time remaining until the end of the fixed period, up to maximum of three months' absentee pay.

The employers shall be entitled to demand payment for damages if such are in excess of the amount described above. These sums in total may not exceed the employee's absentee pay due for 12 months. This upper cap, however, does not apply to the obligation on the part of the employer to retroactively pay the absence fee for the period the employee was out of the job due to the wrongful dismissal in the case the employee requires the reinstatement of the employment relationship. The provisions on wrongful termination of employment shall apply if the employee fails to leave his/her post according to regulations.

Commentary

The amendments regarding the consequences of non-compliance with dismissal regulations can be regarded as beneficial to employees. As the law firm Bird & Bird points out, the inclusion of wrongful dismissal into cases when employees may request their reinstatement has a potential consequence on the sum payable to the employee as compensation. The duration of the period between the time of dismissal and the time of reinstatement shall be regarded retroactively as time spent in employment, and the employee shall receive the absentee pay for the said period. That means that the upper boundary of compensation (12 months absentee pay) does not apply in such cases.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Hungary: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Ireland

Effects of non-compliance with dismissal regulations

Phase	Protection of employment act, 1977 (as amended by S.I. No. 370/1996 Protection of employment order 1996 and S.I. No. 488/2000 Protection of employment regulations 2000); Protection of employment (exceptional collective redundancies and related matters) act, 2007
Native name	Protection of employment act, 1977 (as amended by S.I. No. 370/1996 Protection of employment order 1996 and S.I. No. 488/2000 Protection of employment regulations 2000); Protection of employment (exceptional collective redundancies and related matters) act, 2007
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

1977 Act: 11, 13, 14; 2007 Act: 13

Description

Under sections 9 and 10 of the 1977 Act, there is an obligation on an employer to consult with employee representatives and supply certain information in the context of collective redundancies. Collective redundancy, for the purpose of the act, is defined as least 5 redundancies in an establishment employing 21-49 employees; at least 10 redundancies in an establishment employing 50-99 employees; at least 10% of employees made redundant in an establishment employing 100-299 employees; and at least 30 redundancies in an establishment that employs 300 or more people.

Section 11 deals with failure to comply with sections 9 and 10: an employer who fails to initiate consultations can be fined by up to €5,000.

Section 13 imposes a fine of €5,000 on an employer who fails to notify the minister of proposed redundancies.

Under section 14 of the act, an employer is not allowed to commence collective redundancies until the 30-day consultation period has expired. If the employer breaches this provision, they face a fine of up to €250,000. This fine had been €12,500 before the 1977 Act was amended by the 2007 Act. Offences under sections 9 and 10 of the 1977 Act are prosecuted by the relevant minister.

There are significant changes planned to the rights and redress provisions of the 1977 Act, which are set to be enacted in 2024. These include liquidators/receivers of insolvent companies being liable for information and consultation breaches, as well as a new complaint workers can bring against employers effecting their redundancy before the 30-day consultation period expires.

Commentary

It is considered in some commentary that the €5,000 fine for breaching consultation and information supply obligations in collective redundancies is not effective enough to dissuade non-compliance with these requirements.

The potential €250,000 penalty for carrying out redundancies before a 30-day consultation period has been completed does not apply to situations of liquidation/formal wind up of a company. In July 2015, the Minister for Business and Employment noted this is because where an insolvent firm goes into liquidation, it can no longer trade. It can no longer accrue debts that it is in no position to discharge. It would be difficult to keep staff on books and expect them to work, merely to serve out a 30-day notice period, where the employer has no resources to pay those staff, and it would not appear to be in the interests of the staff themselves.

Nonetheless, the government commissioned an expert report into amending the 1977 Act. Proposal #3 from this report is that the redress for affected workers could be enhanced (up to two years' salary) to provide as an effective deterrent against the contravention of the consultation obligations. However, the government decided not to implement this report. Following the controvery around the closure of Debenhams Ireland in April 2020, there was renewed pressure on the government to legislate on the 1977 Atc.

In June 2021, the government confirmed it will remove the exemption on the 30-day consultation for collective redundancies in insolvency scenarios. An outline of the government's plan includes:

- Where a redundancy arises due to company insolvency, it has been decided that an employee may be placed on temporary lay-off by the liquidator for the duration of the 30-day notification period (with the employment termination date to coincide with the expiry of the statutory 30-day period).
- To ensure compliance, Department of Enterprise, Trade and Employment (DETE) has decided that the redress provision in section 41 of the Workplace relations commission act will apply to a contravention of section 14 of the Protection of employment act 1977 (which provides for the statutory 30-day period of notification to employees). An appeal to the Circuit Court will also be provided.

These changes were expected be legislated for by 2023 but it is now likely to to be 2024.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: 21 Company size: 5 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Ireland: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Italy

Effects of non-compliance with dismissal regulations

Phase	Law 23 July 1991, no. 223, Rules on the Wage Guarantee Fund, redundancies, unemployment benefits, enforcement of European directives, job placement, and other labour market provisions; Law of 28 June 2012, n. 92, Provisions on labor market reform with a view to growth; Legislative Decree 4 March 2015, no. 23. Provisions on the open-ended employment contract with growing protections; Decree Law 12 July 2018, n. 87, Urgent provisions for the dignity of workers and businesses
Native name	Legge 23 luglio 1991, n. 223, Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione di direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di mercato del lavoro; Legge 28 giugno 2012, n. 92, Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita; Decreto Legislativo 4 marzo 2015, n. 23. Disposizioni in materia di contratto di lavoro a tempo indeterminato a tutele crescenti; Decreto legge 12 luglio 2018, n. 87, Disposizioni urgenti per la dignita' dei lavoratori e delle imprese
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Law n. 223/1991, article 4, paragraph 12, and article 5, paragraph 3; Law n. 92/2012, art. 42; Legislative Decree n. 23/2015, article 10; Decree Law n. 87/2018, article 3

Description

The effects of non-compliance with dismissal regulation are different between individual and collective dismissals. In both cases, however, legislative evolution - and in particular Legislative Decree of 4 March 2015, no. 23 - created a composite framework in which the sanctioning regime is determined, in addition to the nature of the fault, by the start date of the employment relationship (before or after 7 March 2015).

In case of non-compliance with the provisions ruling collective dismissal procedures (concerning dismissal of at least five workers within 120 days, in companies employing more than 15 staff), different sanctions apply, largely recalling those applying to the unfair individual dismissal.

In the case of void or verbal termination or termination based on discriminatory reasons, layoffs can be considered null and void and the dismissed workers can be reinstated according to article 18 of Law 20 May 1970, no. 300 (so-called 'Workers' Statute'). Instead of reinstatement, employees can opt for the payment of 15 months' salary. Sanctions typically entail also the payment of financial compensations equal to the salary that the employee would have earned from the date of termination to the date of reinstatement, with a minimum payment of five months' salary.

Failure to abide by procedures of collective dismissal implies the payment of an indemnity up to 36 monthly salaries (Law 87/2018). However, non-compliance with collective redundancy communication procedures can be remedied by means of an agreement with the unions, in the framework of the collective dismissal procedure.

In the case of wrongful termination for financial reasons, reinstatement is envisaged only when the court holds that there is a manifest lack of grounds, namely in cases when the objective financial reasons raised by the employer to justify the termination prove to be non-existent. Otherwise, compensation for damages is envisaged (6–12 months' salary). Employees or others can bring the case to labour courts or make an appeal to employers (either directly or through a trade union) within 60 days.

As to unlawful dismissals, the Jobs Act and, more specifically, Legislative Decree of 4 March 2015, no. 23 introduced a new form of protection that can be applied to workers employed on indefinite contracts from 7 March 2015 onwards. From the merely substantial point of view of the dismissal, the right to reinstatement for these workers is limited to the cases in which the dismissal has not been communicated in writing. The violation of the selection criteria entails the payment of compensation as a form of protection, with an indemnity paid to the worker ranging from six to 36 months' salary, depending on the seniority at work(Law 87/2018).

Further to the publication of Law 30 October 2014, no. 161 in the Italian Official Gazette of 10 November 2014, the collective dismissal procedure referred to in Law no. 223/1991

concerns executives, too.

Commentary

Legislative Decree 23/2015 (so-called Jobs Act) significantly reduced protection against dismissals for workers hired from March 2015 onwards, who are more exposed to this risk than in the past. Specifically, the reform narrowed the field of application of the reinstatement rule in case of unfair dismissal, generally replaced by a seniority based financial compensation. The intervention foreseen by the legislator in 2018 (decree law 87/2018) did not fundamentally alter the system, it has only increased the thresholds for financial compensations.

With the introduction of new rules on collective dismissals by the Jobs Act, there are currently two parallel disciplines for the same cases. Within the same company it is possible that workers in a comparable position enjoy different protections on the mere basis of the day they have been hired.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Court
Involvement (others)	None
Thresholds	Affected employees: 5 Company size: 15 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Italy: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Latvia

Effects of non-compliance with dismissal regulations

Phase	Labour Law
Native name	Darba likums
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Part E

Description

No specific penalties are indicated with respect to non-compliance with dismissals regulation: the same penalties apply as for breaking labour related legislation.

In the case of violation of regulatory enactments regulating employment relations a warning or a fine from seven to 70 units of fine shall be imposed on the employer if it is a natural person, but a fine from 14 to 220 units of fine - if it is a legal person. A unit of fine is defined in Law on Administrative Liability and currently is €5. This means, that if the employer is a natural person a fine may vary from €35 to €350, while if the employer is legal person a fine may vary from €70 to €1,100.

There is a specific administrative liability for violation of prohibition of differential treatment in the field of employment relationship, which can occur, for example, while selecting employees for dissmissal. For this violation a warning or a fine from 28 to 70 units of fine shall be imposed on the employer if it is a natural person, but a fine from 70 to 140 units of fine - if it is a legal person (according to current unit it is €140 - €350 for naturla person, and €350 - €700 for legal person).

There are several other different provisions of administrative liability - for not providing the employment contract in written, not ensuring the state specified minimal monthly wage if the person is employed for a normal working time, not ensuring the minimal hourly tariff rates, or withdrawal from collective bargaining.

Administrative offence proceedings for the offences of Labour Law is conducted by the State Labour Inspectorate.

Commentary

According to the statistics provided by the State labour inspectorate, in 2015 68% of all infringement cases detected by the inspectorate were related to non-compliance with legal norms on safety and health of employees at work; 27% were connected with violation of legal norms of labour rights, including dismissal regulations, which form 14% of all infringements of labour rights.

In 2019, violations of regulatory enactments regulating labor law accounted for 32.0% of all violations detected by the Labor Inspectorate in 2019. In turn, 97.0% of the detected violations of labor law were violations of the provisions of the Labor Law (78.0%) and regulations of the Cabinet of Ministers on registration of state social insurance mandatory contributors and reports on mandatory state social insurance contributions and personal income tax. In 2019, as in previous years, employers most often did not comply with the requirements of Article 40 of the Labor Law, which applies to employment contracts, violations of which accounted for 31.0% of all violations of employment relations. The violations found were related to the conclusion of the employment contract in writing and the content of the employment contract. A significant part of labor law violations (16.0%) consists of violations related to termination of employment, while the majority of them (349 violations or 67.0%) were due to all amounts due to the employee on the day of dismissal, including compensation for unused leave. Violations of labour legislation account for 12% of all violations detected by the State Labour inspectorate officers in 2022. In 2022, as in previous years, employers most often failed to comply with the requirements of Article 40 of the Labour Law, violations of which accounted for 60% of all violations of labour relations. A significant share of labour law infringements (21%) is related to wages, including for the employee on the day of dismissal failure to pay all sums due to the employee on the day of dismissal.

Additional metadata

Cost covered by Employer

Involved actors other than national government	Other
Involvement (others)	State labour inspectorate
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Latvia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Lithuania

Effects of non-compliance with dismissal regulations

Phase	Labour code No XII-2603, Code of administrative offences No XII-1869
Native name	Darbo kodeksas Nr. XII-2603, Administracinių nusižengimų kodeksas Nr. XII-1869
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code (218, 232), Code of administrative offences (96)

Description

According to the Labour code, if an employee is dismissed from work in the absence of a legal basis or in violation of the procedure established by law, the labour dispute resolution body, that is the labour dispute commission or the court, can take a decision to recognise the dismissal as unlawful and to order the employee's reinstatement, his or her remuneration for the period of forced absence (up to one year) and payments for material and non-material damage incurred. The employee is reinstated no later than the next working day after the enactment of the labour dispute resolution body's decision (article 218).

If the dispute resolution body establishes the impossibility of a reinstatement due to economic, technological, organisational, or similar reasons, the existence of unfavourable conditions to work or the employer's opposition to the reinstatement, the body can recognise the dismissal as unlawful and can order the employee's remuneration for the period of forced absence (up to one year) and payments for material and non-material damage incurred. The employee can be as well awarded compensation equal to one average salary for every two years of employment, but no more than six times the

employee's average salary (article 218).

When an employer does not comply with a decision, court order or judgement, the dispute resolution body can impose a fine to the employer up to €500 for each week of delay from the day of the decision's adoption to the day of its enforcement, but for no more than six months. The fine can be requested by and is awarded to the employee. Parties may appeal with respect to the size and the validity of the fine in accordance with the procedure established by law (article 232).

In force since 1 January 2017, the Code of administrative offences foresees fines from €240 to €880 for employers violating labour laws (article 96). The State Labour Inspectorate (SLI) is responsible for monitoring the legal implementation. Thus, employees (or their representatives) can file a complaint to the inspectorate in case of non-compliance with dismissal regulations.

Commentary

It should be noted that employers generally comply in practice with the established statutory procedures. However, according to the State Labour Inspectorate, pandemic-related lockdown and restrictions on economic activities have resulted in the increased number of violations on the part of employers involving psychological pressure on employees to prompt their voluntary redundancy (in accordance with article 55 of the Labour code - Termination of an employment contract on the initiative of the employee without a valid reason).

As of July 2023, no official data is available on this topic.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Trade union Works council Other Court
Involvement (others)	State Labour Inspectorate, labour dispute commissions
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Lithuania: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Luxembourg

Effects of non-compliance with dismissal regulations

Phase	Labour Code
Native name	Code du travail
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Art.L.124-6 (individual dismissals), Art.L.166-2 (8) (social plans)

Description

The effects of non-compliance with dismissal regulations differ according to the category of dismissal, notably whether these concern collective dismissals or individual dismissals.

- Collective dismissals

If an employer considers dismissing at least seven employees within a period of 30 days or 15 employees within a period of 90 days, the employer must enter into prior negotiations with employees' representatives with the view of establishing a social plan. The social plan is a written agreement signed by employer and employees' representatives. The aim is to avoid collective redundancies or to reduce the number of dismissals and to mitigate the consequences of the redundancies. If the employer fails to negotiate on those issues, the dismissals are null and void.

If an employee is notified of his/her dismissal before the information and consultation process or before the social plan is signed, the dismissal is equally null and void. This rule applies also in the event where the parties have failed to reach an agreement, before the non-conciliation report of the National Conciliation Service's (Office national de conciliation - ONC) joint conciliation committee has been signed. Consequently, the

dismissed employees must be reinstated. Employees dismissed within a collective dismissal not conforming with the labour law are entitled to claim financial compensation for unfair dismissal before the labour court.

- Individual dismissal

In the event of justified gross misconduct by the employee, the employer may terminate the contract without notice in the case of a contract concluded for an indefinite period of time, and before the end of its term in the case of a fixed-term contract.

However, if the employer terminates the employment contract before the end of the notice period stipulated by articles L. 124-4 and L. 124-5 of the Labour Code, the employer must pay the employee a compensation equivalent to the salary during the notice period. This compensation comes on top of the severance allowance and damages for unfair dismissal.

Commentary

No information available.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court National government
Involvement (others)	None
Thresholds	Affected employees: 7 Company size: 7 Additional information: The Labour Code stipulates three company eligibility thresholds: - 7 employees within a period of 30 days - 15 employees within a period of 90

Sources

Citation

Eurofound (2015), Luxembourg: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Malta

Effects of non-compliance with dismissal regulations

Phase	Subsidiary Legislation 452.80 - Collective Redundancies (Protection of Employment) Regulations (Legal Notice 428 of 2002, as amended by Legal Notices 427 and 442 of 2004 and L.N. 281 of 2017; Cap. 452 - Employment and Industrial Relations Act, 2002
Native name	Leġislazzjoni Sussidjarja 452.80 - Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impjiegi) (Avviż Legali 428 ta' l-2002, kif emendat bl-Avviżi Legali 427 u 442 ta' l-2004) u Avviz Legali 281 of 2017; Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, 2002
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Collective Redundancies (Protection of Employment) Regulations as amended by L. N. 428 of 2002, as amended by Legal Notices 427 and 442 of 2004 and 281 of 2017 - Whole regulation; Employment and Industrial Relations Act, 2002 - Articles 36 and 81

Description

Collective dismissals

In the event of non-compliance with the Collective Redundancies (Protection of Employment) Regulations, the legislation specifies fines of not less than €1,165 for every employee declared redundant.

The Department of Industrial and Employment Relations can take action regardless of whether a collective redundancy (10 dismissals in companies with 21-99 employees, 10%

of staff in companies with 100-299 employees, 30 dismissals in larger companies) has been notified or not to the Director General Industrial and Employment Relations. The Department of Industrial and Employment Relations is empowered to pass on the case to the police to take criminal action in the case of a breach of any of the provision of the Collective Redundancies (Protection of Employment) Regulations.

Moreover, the affected party (being the employee or ex-employee) can also institute a claim of alleged unfair dismissal before the industrial tribunal which has exclusive jurisdiction in cases of alleged unfair dismissal.

If the employer fails to give the employee the statutory notice period or does not require the employee to work during the notice period, the employer has to pay the employee a sum equal to the full wages that would be payable in respect of the unexpired period of notice.

Individual dismissals

In cases of unfair dismissal, if the complainant has requested reinstatement, and the Industrial Tribunal deems this solution to be reasonable and equitable, the Tribunal shall issue an order for such reinstatement or re-engagement, delineating the terms. Such order will not be made where the post in question was a managerial or executive one, though if the appointment or selection to such managerial/executive post had been made by co-workers, the Tribunal may order that the complainant be reinstated or re-engaged in the post they had previously held.

If no request for re-engagement or reinstatement is specifically made by the complainant, or if the Tribunal decides against such an order, then the Tribunal shall require the employer to pay compensation to the complainant, taking into account the losses and damages suffered by the employee as a result of unjust dismissal, and other circumstances that may affect the worker's potential for employment, such as age and skills (Article 81).

Under Article 36(11, 14), if an employer terminates a definite contract without good and sufficient cause, before the expiration of the period of employment specified in the contract, the employer is required to pay the employee half of the full wages they would be entitled to for the remainder of the agreed-upon duration.

Commentary

Labour legislation and related amendments are discussed at formulation stage in the tripartite Employment Relations Board (ERB). Members forming this board come from

trade unions, employer associations and the government.

The Court of Appeal in PD vs De La Rue Security Print Limited (23 April 2018), noted that although the Industrial Tribunal is vested with discretion when determining compensation to be awarded, this discretion should be exercised in a manner that is reasoned and reasonable, with reference to case-specific circumstances and context.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Industrial tribunal; Employment Relations Board; Department of Industrial and Employment Relations
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Malta: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Netherlands

Effects of non-compliance with dismissal regulations

Phase	Collective redundancy notification act; Works council act; Civil code
Native name	Wet melding collectief ontslag; Wet op de ondernemingsraden; Burgerlijk Wetboek
Type	Effects of non-compliance with dismissal regulations
Added to database	06 August 2015
Access online	Click here to access online

Article

Articles 5 and 7 Collective redundancy notification act; Article 26 Works council act; Article 7:681 and 7: 671b Civil code

Description

Consequences of non-compliance

The Collective redundancy notification act establishes rules for notifying staff and others affiliated with an enterprise of a pending collective dismissal of employees. The act is related to the Act on collective dismissal (Wet Collectief Ontslag). The Act on collective dismissal applies when an employer intends to dismiss or has dismissed at least 20 employees in one or more locations of the same company within one and the same region of the public employment service. There are 6 such regions in the Netherlands within a period of three months due to reorganisation for economic reasons, and regions in this case are defined by the public employment service, the UWV.

The Collective redundancy notification act was last updated in 2018. The act states that when the conditions for a collective dismissal are in place, the employer has a legal obligation to notify the employees to be dismissed. Specifically, an employer must inform the works council and the UWV of the dismissal in a timely manner. In practice, this often

entails that an employer must inform the works council for the enterprise as well. Article 4 of the act stipulates exactly which information needs to be provided to whom.

The Act on collective dismissals must also be accompanied with a new plan for the business and who many employees will be needed in which positions. In this way, an enterprise legitimises the reasons for the collective dismissal. This plan (afspiegelingsbeginsel) must be submitted when collective dismissal is planned for economic or financial reasons.

The act also contains two sanctions of non-compliance with the act.

According to article 5, the public employment service postpones the procedure to issue the required dismissal permits in case of collective dismissals (within 3 months, at least 20 employees in one or more plants of the same company employed within one and the same region of the public employment service), until the moment that both the notification of collective dismissal by the employer has been received, and the employer has stated to have consulted the unions and the works council.

According to article 7, the court, at the request of the employee, may void the termination of the employment relationship by the employer, or a possible agreement between employer and employee to end the employment relationship, in case the core articles of the Collective dismissal act have been violated. These core articles consist of:

- the duty of the employer to notify the public authorities of the intended dismissal;
- the duty of the employer to inform and consult the unions and the works council;
- the duty of the employer to comply with a waiting period of one month after notifications, unless all unions consulted declare that they have been consulted and agree with the redundancies or in case of bankruptcy and debt settlement.

Instead of voiding the termination by the employer or the termination agreement, the judge may, at the employee's request, oblige the employer to pay a fair compensation. The employee request can be made up to two months after the date on which he/she could reasonably be informed of the fact that the employer has not fulfilled one or more of the obligations, but no later than six months after the termination of the employment contract or of the commencement date of the termination agreement. Both article 5 and 7 above only apply to collective dismissals.

According to article 26 of the Works council act, the court may block restructuring if there have been serious flaws in the information and consultation procedure, included in articles 25, 27 and 35. Examples of these flaws include absence of (timely) information and consultation, insufficient information, absence of sufficient motivation for the decision, absence of measures to deal with the consequences of the restructuring decision.

A recent adjustment to the Works council act, which applies since January 2019, is that now employers are obliged to have an annual meeting with the works council for their enterprise to discuss salaries, and the ratios in salary scales across the different occupations in the enterprise.

In case of individual dismissals, the employee may go to court to annul the termination of the employment relationship, if the employer has breached the statutory dismissal regulations. Based on article 7:681 Civil code and article 7 of the Collective redundancy notification act, the employee may then demand redeployment or financial compensation. In case of a dissolution request, the court must check whether the Collective redundancy notification act is applicable and whether the obligations arising from it are complied with. If afterwards it appears that obligations have not been complied with, circumstances under which revocation of the dissolution may be applied and enforced.

Commentary

When the Collective redundancy notification act was changed and made stricter in 2012, employer organisations raised concerns regarding the legal uncertainty for employers. They argued that it would become unacceptable when employees can contest their dismissal for up to six months after it occurs, as it may result in great financial risks and the obligation to re-hire an employee.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: 20 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Netherlands: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Norway

Effects of non-compliance with dismissal regulations

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

15-12, 15-5, 17-4

Description

Dismissals can be tried in court in order to be ruled invalid. If a dismissal is in contravention of the Working Environment Act, the court shall, if so demanded by the employee, rule the dismissal invalid. In special cases, and if so demanded by the employer, the court may decide that the employment shall be terminated if, after weighing the interests of the parties, the court finds it clearly unreasonable that employment should continue. This is seen as a safety valve, and could for instance be used in cases where the employee is to blame for the situation, for instance by having been active in developing a conflict with the manager .

An employee might also claim compensation. The amount is set by the court on basis of financial loss, circumstances relating to the employer and the employee, and other facts of the case.

Employees can take action through the courts following negotiation (for up to eight weeks, or six months if only compensation is claimed) with employees entitled to remain in their posts during this period. If the notice contains formal errors, is not given in writing or does not include the required information, the employee can initiate legal proceedings within four months. In such cases the notice shall be ruled invalid unless special circumstances

make this clearly unreasonable.

Commentary

There is no fixed compensation; compensation is awarded on the basis of case law.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Norway: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Poland

Effects of non-compliance with dismissal regulations

Phase	Act of 9 March 2023 amending the Act - Labour Code and certain other acts; Act of 13.03.2003 on special principles of termination of employment contracts with employees for reasons not related to employees - 'Collective Dismissals Act'; Act of 26.06.1974 - Labour Code; Act of 23.05.1991 on trade unions; Act of 6.06.1997 - Criminal Code
Native name	Ustawa z dnia 9 marca 2023 r. o zmianie ustawy - Kodeks pracy oraz niektórych innych ustaw; Ustawa z dnia 13.03.2003 o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn niedotyczących pracowników; Ustawa z dnia 23.05.1991 r. o związkach zawodowych; Ustawa z dnia 26.06.1974 r. -Kodeks pracy; Ustawa z dnia 6.06.1997 r. -Kodeks karny
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 1 of Act of 9 March 2023 amending the Act - Labour Code and certain other acts Article 12 of the Act of 13.03.2003 on special rules of termination of employment contracts with employees for reasons not related to employees - 'Collective Dismissals Act'; Article 45 and 50 of Act of 26.06.1974 - Labour Code; Article 35 of the the Act of 23.05.1991 on trade unions; Article 218 of the Act of 6.06.1997 - Criminal Code

Description

If an employer violates the rules on procedure, notice periods or related compensation for dismissals, or the rules on collective dismissals (within 30 days, dismissals of at least 10 employees in companies with 20-99 employees, at least 10% in companies with 100-299

employees, or 30 dismissals in larger companies), employees can (individually) file a complaint with the labour court. The nature of the claim depends on the type of employment contract. On the basis of Article 45 of the Labour Code, a worker with an open-ended contract can choose between financial compensation (1-3 months' salary) or reinstatement of the contract. According to Article 50 of the Labour Code, an employee with a fixed-term contract can only receive financial compensation (1-3 months' salary).

If the employer does not comply with the obligation to consult with the union, it can be considered an obstruction of trade union activities (Article 35 of the Law on Trade Unions) and he/she is subject to a fine or a penalty of restriction of liberty. This penalty is generally up to 2,000 zloty (about €480) and, in special cases, up to 5,000 zloty (about €1,200) if imposed by the labour inspectorate or 10,000 (€2,400) to 30,000 zloty (€7,200) if imposed by the court.

Article 218 of the Penal Code is of some relevance in this respect, paragraph 1(a) of which states that 'whoever, while carrying out activities in the field of labour law and social security, maliciously or persistently violates the rights of employees arising from employment or social security, shall be punished by a fine, penalty of restriction of liberty or imprisonment for up to two years'.

According to Article 1 of Act of 9 March 2023 amending the Act - Labour Code and certain other acts, the employer's statement of termination of a fixed-term employment contract or an employment contract of an indefinite duration employment contract of indefinite duration or to terminate a contract of employment without notice shall specify a reason justifying the termination or cancellation of the contract. In the event that it is determined that the termination of a fixed-term employment contract or an employment contract for an indefinite period of time is unjustified or in breach of the provisions on termination of employment contracts, the labour court - according to the employee's demand - decides on ineffectiveness of the termination, and if the contract has already been terminated - on reinstatement of the employee to their employment on the previous terms and conditions or on compensation. Pursuant to Article 1 of the Act of 9 March 2023 amending the Labour Code and certain other acts, the employer's notice of termination of a fixed-term employment contract or an employment contract for an indefinite period or of termination of an employment contract without notice shall state or termination of an employment contract without notice must state a reason justifying the termination or cancellation of the contract. If it is established that the termination of a fixed-term employment agreement or an employment agreement for an indefinite period of time is unjustified or violates the provisions on termination of employment agreements, the labour court shall, at the employee's request, rule on the invalidity of the termination and, if the agreement has already been terminated, on the reinstatement of the employee in his employment under the previous conditions or on compensation.

An employee who has been terminated from a contract concluded for a trial period in breach of the Labour Code provisions is also entitled to claim compensation in court. Pursuant to Article 50 § 1 of the Labour Code: if an employment contract concluded for a trial period was terminated in breach of the provisions on termination of such contracts, the employee is entitled to compensation. The compensation is due in the amount of remuneration for the time until the expiry of which the contract was to last.

If a fixed-term employment contract is terminated in breach of the provisions on the termination of such a contract, the compensation shall amount to the remuneration for the time until the expiry of which the contract should have lasted, but no more than for 3 months.

Commentary

According to the verdicts of the supreme Court (SN 23.01.1991 I PR 452/90 and SN 4.12.2008 II PK 137/08) issues which are not regulated in the Collective Dismissals Act should be resolved in accordance with the Labour Code. These verdicts show that during collective dismissal employees have the same claims before labour court (claim for compensation or claim for reinstatement) as in case of individual dismissal.

According to police data, 1,271 cases were filed for infringement of employees' rights (Article 218 of the Criminal Code) in 2016. For comparison, 1,250 cases were filed in 2015.

Statistics indicate the rare application of article 35 of the Act on trade unions. In most cases the employer is not fined.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Poland: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Portugal

Effects of non-compliance with dismissal regulations

Phase	Labour Code
Native name	Código do trabalho
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

360 (6), 361(6), 363 (6), 381, 389 (1 and 2), 390, 391, 392, 396, 554 and 555

Description

The Authority for Working Conditions (Autoridade para as Condições de Trabalho - [ACT] (http://www.act.gov.pt/%28pt-PT%29/Paginas/default.aspx)) is an administrative structure operating within the Ministry of Employment which investigates compliance with employment legislation. Companies that do not comply with regulations are sanctioned. Sanctions take the form of financial penalties that vary in accordance with the type of offence and companies' turnover.

In the event of an unlawful dismissal, the employer is obliged to compensate the worker and reinstate him/her in the same department of the company, keeping the previous category and tenure of the worker. The worker may choose compensation instead of reinstatement. In the event of minor procedural irregularities the compensation amounts to half of the compensation defined by law (between 15 and 45 days of salary, with an additional amount based on years of service).

Dismissal is considered unlawful if it is due to political, ideological, ethnic or religious reasons or if there was no previous consultation of the Commission for Equality in Labour and Employment (Comissão para a Igualdade no Trabalho e no Emprego - CITE) in case of a worker who is pregnant, recently gave birth or breast feeding or of a worker who is

enjoying initial parental leave.

If the worker chooses the compensation instead the reinstatement it is up to the court to establish the amount of the compensation, within the above-mentioned range. The amount of the compensation must not be lower than the equivalent to three months of basic salary and seniority payments.

In case of micro enterprises or of worker with a management position the employer may require the court to exclude reinstatement. In this situation the worker has the right to compensation between 30 and 60 days of basic salary and seniority payments. This amount can not be lower than the equivalent of six months of basic salary and seniority payments.

The Labour Code states that a variable fine is applied in conformity with the scale of seriousness of the administrative offences in the field of labour and according to the firm's volume of business and the degree of the law-breaker's culpability. The fine may vary between 2 to 600 Units of Account (UC).The Unit of Account is currently valued at €102 (2023).

Commentary

No additional information available.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Authority for Working Conditions (Autoridade para as Condições de Trabalho - ACT)
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Portugal: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Romania

Effects of non-compliance with dismissal regulations

Phase	Labour Code, Law no. 53/2003, republished in the Official Gazette of Romania no 345 dated 18 May 2011
Native name	Codul muncii, Legea nr. 53/2003, republicată în Monitorul Oficial nr. 345 din 18 mai 2011
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour Code, Law no. 53/2003 [Codul muncii, Legea nr. 53/2003] - 78-80

Description

The dismissal ordered in non-compliance with the procedure stipulated by the law is considered void. Also, there are certain periods of the labour relation when dismissal is null and void: * during the time of temporary incapacity of work, ascertained by medical certificate; * during quarantine; * during the period of pregnancy, as long as the employer is informed about this fact prior to issuing the decision of dismissal; * during maternity leave; * during childrearing and care giving leave until the child reaches the age of two or, in the case of a disabled child, until he or she turns three; * during the care giving leave for a sick child up to the age of seven or, in the case of a disabled child, until he reaches the age of 18, due to recurrent episodes of illness; * while on holiday; * during maternal risk leave, as well as during the leave granted to those employees who have recently given birth or who are breastfeeding. The interdiction of dismissal can be extended only once, for up to six months, from the date the employee has returned to work within the enterprise.

In the event of a labour conflict, an employer may not resort, in a court of law, to other de facto or de jure reasons than the ones stated in the dismissal decision.

If the dismissal has not been based on good grounds or has been unlawful, the court shall order its cancellation and force the employer to pay a compensation equal to the indexed, increased and updated wages and any other rights the employee would have otherwise benefited from. At the employee's request, the court having ordered the cancellation of the dismissal shall reinstate the worker in the exact position he or she had at the moment of the (void) dismissal. If such a request for reinstatement exists, the court will not have the right to express its opinion about the suitability or opportunity for reinstatement. Once the dismissal has been considered illegal and voided, the court is obliged to accept the employee’s request to be reinstated. If another person has been employed in the same position in the meantime, his or her contract will automatically be terminated.

If the employee does not request reinstatement, his or her labour agreement shall end de jure on the date when the court decision is final. This amendment, introduced in 2011, resolves the controversial issue of the juridical ground of the case where the labour contract of the employee who obtained annulment of the dismissal may end in case the employee does not want to return to his or her job.The provisions are applicable both for individual and collective dismissals.

Commentary

According to article 60, paragraph 1 (g) of the Labour Code, individual or collective dismissal cannot include employees in elected positions within a trade union body. This prohibition was not limited to union activity, but could also have covered situations where the job was lost due to economic factors. In a case challenging the constitutionality of this text, the Constitutional Court found that the provision affects the employer's property rights enshrined in the Constitution. As a result, through Decision no. 814/2015, published in the Official Gazette no. 950 of 22 December 2015, the prohibition of dismissal was declared unconstitutional. Only the prohibition of dismissal of union leaders for union activities remains in force, laid out in article 220, paragraph 2 of the Labour Code. Today, a dismissal affecting trade union leaders is considered valid, as long as it has nothing to do with the union activity.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Court

Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Romania: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Slovakia

Effects of non-compliance with dismissal regulations

Phase	Labour Code
Native name	Zákonník práce
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

63, 64, 73, 77

Description

Legislation specifies that employees are entitled to compensation in the amount of at least two times their average salary if the employer:

- gives notice in conflict with reasons defined in the Labour Code: for instance, reasons related to the employer (like the economic performance, effectiveness of production or provided services) or reasons related to the employee (like the health condition, unsatisfactory work performance, labour discipline);
- gives notice to the employee despite of prohibited reasons related to protected periods (like disease or accident, pregnancy, maternity/parental leave).

In case of collective redundancies (dismissals of at least 10 employees in companies with 21-99 workers, at least 10% of staff in companies with 100-299 workers, or at least 30 employees in companies with 300 or more workers, within 30 days), employees are entitled to compensation if:

- employee representatives (trade unions or works councils) were not informed and the consultation did not take place;

- a final consultation report was not delivered to the workers' representatives or the local public employment office;
- the employer gives notice prior to one month from the date when the final report was delivered to the workers' representatives or the employment office.

Employees can take action through the court within two months of the termination of their employment contracts, but no later than six months from the date on which the employment relationship should have ended, if the employee was not in a protective period.

Commentary

According to Statisticka rocenka Ministerstva spravodlivosti SR (Annual Statistics of the Ministry of Justice) the numbers of cases brought forward are relatively low (less than 10% of individual labour disputes). However, the total number of cases brought forward is decreasing. While in 2015, 104,688 civil-law cases were filed, of which 895 were labour disputes, in 2022, out of a total of 71,310 civil-law cases filed, 655 were labour disputes (Statistická rocenka Ministerstva spravodlivosti 2022; Občiansko právne veci (https://web.ac-mssr.sk/wp-content/uploads/2023/statisticka_rocenka_2022/III.%201%20Ob%C4%8Dianskopr

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovakia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Slovenia

Effects of non-compliance with dismissal regulations

Phase	Employment Relationship Act (ZDR-1); Criminal Code (KZ-1)
Native name	Zakon o delovnih razmerjih (ZDR-1); Kazenski zakonik (KZ-1)
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 217 of the Employment Relationships Act (ZDR-1); Article 196 of the Criminal Code (KZ-1)

Description

A fine of between €3,000 and €20,000 shall be imposed on an employer – a legal person, a sole proprietor or a self-employed person – if the employer carries out the procedure of giving notice to a larger number of workers for business reasons contrary to statutory provisions regarding collective dismissals (within 30 days, dismissal of at least 10 workers in companies with 21-99 employees, at least 10% in companies with 100-299 employees and 30 dismissals in larger firms).

Employees can take action through the labour inspectorate.

Violation of workers' rights in the process of collective dismissal constitutes a criminal offence in the following circumstances. Whoever acts contrary to regulations governing the conclusion and termination of employment contracts, thereby depriving or restraining the labour rights of one or more workers, is punished by a fine and sentenced to imprisonment for a maximum of three years. If this action results in unlawful termination of the employment relationship of at least 20 workers, the perpetrator is sentenced to imprisonment for a maximum of five years and ordered to pay a fine.

Commentary

Cases of non-compliance are only infrequently brought forward. The labour inspectorate did not report on any violations regarding collective dismissals in its annual reports for 2021 and 2022.

However, labour inspectors detected 273 irregularities involving the termination of employment contracts in 2022. Infringements involving severance pay (91 cases) were the most common. There were 50 fixed-term workers and 41 workers whose employment contracts were ended owing to the employer's dismissal for business or incompetent reasons.

The second most common breach was infringements concerning the form and content of the termination: 56 employers failed to provide the termination of employment contract in writing, explain the reason for the termination, or inform the employee of legal protection and unemployment insurance rights, as well as the obligation to register in the jobseeker register (Labour Inspectorate, 2023, p. 64).

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Other Court
Involvement (others)	Labour inspectorate
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Slovenia: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Spain

Effects of non-compliance with dismissal regulations

Phase	Statute of Workers' Rights; Law 36/2011 of 10 October that regulates the social jurisdiction; Law 3/2012 of 6 July on urgent measures to reform the labour market; Royal Decree law 11/2013 of 2 August for the protection of part-time workers and other measures in the economic and social field
Native name	Estatuto de los Trabajadores (ET); Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social; Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral; Real Decreto 11/2013, de 2 de agosto, para la protección de los trabajadores a tiempo parcial y otras medidas urgentes en el orden económico y social
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 51 Statute of Workers' Rights; Article 122 Law 36/2011; Article 18 Article Law 3/2012; Article 11 Royal Decree 11/2013

Description

In the event of non-compliance with legislation and the negotiation procedure in case of collective dismissals, worker representatives (workers' delegates, working committees or trade unions) can challenge the procedure and take action against the employer in the Social Court. In such cases, the judge can rule that the dismissal procedure is null and void. Furthermore, access to the Compensation Fund (Fondo de Garantía Salarial) can be denied.

Under Spanish law, a dismissal is considered to be ‘collective’ where the termination of employment contracts are based on economic, organisational, technical or productive grounds. To be considered 'collective', such terminations must concern more than 5 employees if the whole workforce is affected, at least 10 employees in companies smaller than 100 employees, 10% of the employees in companies between 100 and 299 employees, or at least 30 employees in companies with more than 299 employees.

There are no criminal sanctions if the employer does not adhere to the procedure set by the law. The action that can be taken by the Social Court (Tribunal de lo Social) is to rule that the dismissal procedure is null and void. In those cases workers have to be reinstated in the company.

In the event of unfair dismissal, as declared by the court, the employer can choose compensation in lieu of reinstatement. The compensation amounts to 33 days' pay for each year of service up to a maximum of 24 months' pay. In case of reinstatement, the employer is to reimburse the employee counting from the day of dismissal until the day of the court's decision or until the employee finds another job, should this happen before the court makes a ruling on the matter.

Commentary

According to the OECD (2013), the elimination of administrative authorisation in collective dismissals by Law 3/2012 increased the uncertainty about the final cost for employers of dismissal decisions. Even if the litigation rate as regards collective redundancies remained relatively low (below 5%), a large share of concluded procedures concerning collective dismissals resulted in court rulings against the employer. In most of these cases, the judges ruled that the dismissal procedure was null and void and ordered the reinstatement of the affected workers with backpay. This was a new situation in the Spanish labour market. Moreover, in most cases, the court decisions against employers was based on non-compliance with the negotiation procedure rather than the dismissal causes. These shortcomings of the new regulations of collective dismissals were partly addressed by the Royal Decree law 11/2013, which defined in a more precise way the requirements of the consultation procedure and the cases in which the dismissal can be declared void.

Additional metadata

Cost covered by	Employer

Involved actors other than national government	Trade union Works council Court
Involvement (others)	None
Thresholds	Affected employees: 6 Company size: 6 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Spain: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin

Sweden

Effects of non-compliance with dismissal regulations

Phase	Employment protection act (1982:80)
Native name	Lag (1982:80) om Anställningsskydd
Type	Effects of non-compliance with dismissal regulations
Added to database	08 May 2015
Access online	Click here to access online

Article

34-36, 38, 39

Description

A dismissal without just cause should be declared null and void by the employer if so requested by the employee, unless the employee is dismissed due to a shortage of work. If there is a shortage of work, the dismissal is null only if the seniority rules on selection are violated. The labour courts settle any disputes over rights and obligations. In addition, economic and general damages can be paid.

Failure to inform and consult trade unions or to give notification to the public employment service does not make the collective dismissals void, but may make the employer liable for fines (about €10–60 per affected employee and the fines increase with the length of the failure to consult and notify).

If an employer fails to comply with a court order declaring a dismissal null and void, the employment relationship is deemed as having been dissolved, and the employer has to pay (additional) compensation to the employee (up to 32 monthly wages).

In 2022 there were some amendments to the law. Firstly, the employment relationship is declared void when a dispute over wrongful termination, meaning the employer no longer must pay the regular wages in anticipation of a court decision. The employee can instead

recieve economic support from the regular unemployment insurance. Additonally, the fines were increased to SEK 135,000 for general damages, and in the event of an unlawful dismissal to SEK 190,000. It is still up to the courts to decide in their case law how large the increase will be in general damages for invalid terminations and dismissals. These changes are in effect since 1 October 2022.

Commentary

One of the most common reasons for declaring a dismissal void is inadequate documentation by the employer.

The reform of the Employment protection act in 2022 changed practices in cases of disputes about dismissals. If a dismissal is annulled, the employment will end after the end of the notice period, rather than last until the dispute is finally settled, which is the current practice. Thus, the employer will not have to pay wages during the entire dispute period. Instead, the dismissed employee may seek support from the unemployment insurance fund and, if the employer is bound by the main agreement, a supplementary collectively agreed unemployment insurance fund, which together correspond to 80% of the employee's salary. The changes entered into force on 1 October 2022.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	Public employment service Trade union Court
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Sweden: Effects of non-compliance with dismissal regulations, Restructuring legislation database, Dublin