Austria

Selection of employees for (collective) dismissals

Phase	Labour Constitution Act (ArbVG); Maternity Leave Act (MSchG); Parental Leave for Fathers Act (VKG); Security of Workplace Act (APSG)
Native name	Arbeitsverfassungsgesetz (ArbVG); Mutterschutzgesetz (MSchG); Väter-Karenzgesetz (VKG); Arbeitsplatzsicherungsgesetz (APSG)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

105 (ArbVG); 10 and 15n (MSchG); 7 (VKG); 12 (APSG)

Description

When selecting employees for (collective) dismissals, the employer has to take into consideration 'social hardship', that is the potential negative consequences for the worker compared to other workers, influenced, for example by the likely duration of unemployment, future lower income levels, the health situation of the worker or the tenure in the current firm.

Certain groups of employees benefit from special protection against dismissal: Apprentices, pregnant women, parents on parental leave, disabled workers, workers fulfilling their military service, works council members, contract officers in the public service sector and janitors with company housing.

The employer has to inform the works council about each planned dismissal. The works council has one week to comment on the proposal. Upon the request of employees, works council or employee representatives are entitled to appeal to the court within one week after having been notified of a (collective) dismissal and object 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 or approved the dismissal (§105 ArbVG).

Commentary

The challenge of a dismissal in cases of 'social hardship' is only possible in companies where at least 5 employees are employed constantly. If the works council has approved dismissals that qualify as socially unjustified it is not possible to appeal to the court (§105 (3), 2).

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: 5 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Austria: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Belgium

Selection of employees for (collective) dismissals

Phase	Omnibus Act of 29 March 2012 containing various provisions (Title 9 - Chapter 4: Population pyramid in case of collective dismissal)
Native name	Loi du 29 Mars 2012 portant des dispositions diverses/Wet of 29 Maart 2012 houdende diverse bepalingen (Titre 9 - Chapitre 4: Pyramide des âges en cas de licenciement collectif/Titel 9 - Hoofdstuk 4: Leeftijdspiramide bij collectief ontslag)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

62, 63 and 65

Description

In case of collective redundancies (within 60 days, at least 10 dismissals in companies with 20-99 employees, 10% of the workforce in companies with 100-299 employees, at least 30 dismissals in companies with 300 or more employees), companies must spread redundancies proportionally with regards to the age of their employees in order to maintain the age pyramid in the workplace as it was before the collective redundancies. A deviation of 10% is accepted for redundancies spread across the different age categories (namely: younger than 30; 30–50; 50 and older). Employees with fixed-term contracts and those hired for a specific project can be excluded from this scheme. Employees in key roles in the company may also be excluded. Unions' representatives have a particular protection against layoffs which can be removed only by the relevant joint committee or the labour court.

Commentary

The obligation to respect the age pyramid does not create special protection or rights for individual employees but it is an important condition for companies wishing to maintain their entitlement to a reduction in social security contributions. The goal of this obligation is to prevent the targeting of specific age groups within the company in case of dismissals. In some cases employers would want to dismiss older employees in favour of younger ones, since they are more expensive because of their seniority years.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	National government
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Belgium: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Bulgaria

Selection of employees for (collective) dismissals

Phase	Labour Code; Law for Health and Safety Working Conditions
Native name	Кодекс на труда, Закон за здравословни и безопасни условия на труд
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Article 333 (Labour Code); Article 30 (Law for Health and Safety Working Conditions)

Description

In accordance with provisions of the Labour Code, in the framework of collective dismissals (within 30 days, at least 10 dismissals in companies with 20-99 workers, at least 10% in companies with 100-299 workers, at least 30 dismissals in companies with 300 or more workers) an employer may dismiss only with the prior consent of the labour inspectorate:

- employees who are mothers of children younger than three years old;
- employees who have been reassigned for health reasons (where the opinion of a commission of medical experts is delivered);
- employees suffering from certain diseases listed in a Ministry of Health regulation (certification from commission of health experts necessary);
- employees who have commenced a period of authorised leave;
- employees who are elected employees' representatives on information and consultation and members of committees on health and safety/working conditions;
- members of the European Work Councils.

In cases of the partial closure of an enterprise, as well as of staff cuts or reductions in the volume of the work, the employer is allowed, in the interest of production or business, to dismiss selected employees whose positions have not been made redundant, in order to retain employees of higher qualifications and better performance. However, the employer could dismiss an employee, member of the leadership of the enterprise trade union (territorial, industrial or national elected trade union body) during the period the trade union position is held and no earlier than six months after, only with preliminary agreement of the trade union's central management.

While planning to make such structural changes, the employer must make efforts to reach an agreement with the representatives of the trade unions and that of employees regarding the consequences of possible collective dismissals.

Representatives on working conditions committees and groups are among the protected in case of collective dismissals (Art. 30, Law for Health and Safety Working Conditions.

Commentary

Art. 333 of the Labour Code establishes the so-called 'Prior protection' upon dismissal. The protection is preliminary because it precedes the dismissal. Its purpose is to make dismissal subject to prior authorisation of a state or trade union body, and only upon receipt of that authorisation the dismissal may be carried out. This permission is requested in writing by the employer and must be received in writing by the competent state or trade union body. If such an authorisation is not requested or when been requested, it has not been given before the dismissal, the dismissal made on that ground alone is unlawful.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union
Involvement (others)	None
Thresholds	Affected employees: 10 Company size: 20 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Bulgaria: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Croatia

Selection of employees for (collective) dismissals

Phase	Labor 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	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Articles 127 (2, 3, 4), 128 (2)

Description

The selection of employees for collective redundancy is made by the employer and must be discussed with the works council. The employer is obliged to supply the works council with all relevant information and notify them in writing on:

- the reasons for the projected redundancies;
- the total number and categories of workers employed;
- the number and categories of workers to be made redundant;
- the criteria proposed for the selection of the workers to be made redundant;
- the amounts and methods for calculating severance pay and other payments to the affected workers.

The projected collective redundancies notified to the competent public authority responsible for employment take effect not earlier than 30 days after the mentioned notification. The competent public authority responsible for employment may request the employer to postpone either collective or individual redundancies for a maximum 30 days, if he/she is able to ensure the continuation of employment for the workers during this extended period.

Commentary

In the selection of redundant employees, the employer, the works council and the public employment service pay due care to age, gender, level of education, job specification, termination period, duration of employment contract, disability status, number of family members they support, amount of severance pay required as well as alternative measures of employment and additional training for another position within the company. However, these are not exact rules.

Article 127 of the Labor Law stipulates that an employer whose need for work could cease within a period of ninety days for at least twenty workers, of whom the employment contracts of at least five workers would end due to business-related dismissal, is obliged to do so in a timely manner and in the manner prescribed by the Labor Law. The employer should consult with the workers' council in order to reach an agreement on how to reduce the need for workers. At the same time, as redundant workers are counted also workers whose employment relationship will end due to business-related termination of the employment contract and an agreement between the employer and the workers at the employer's proposal. Therefore, in such a case, it is important to distinguish who made the proposal for the agreement - the employer in the process of resolving the redundancy, or the employee for some of his or her personal reasons that have no relation to the collective redundancy. That is why, in such circumstances, it should be stated in the agreement who proposed it, which is otherwise not necessary in any way.

As mentioned, the agreement on the termination of the employment contract must be concluded in writing. Without a written form, there is no agreement, it is invalid, therefore void. So, unlike an employment contract, for which a written form is not necessary for its existence, it is necessary for a termination of the employment agreement. This is understandable because when concluding a contract, the very fact of working for an employer shows the agreement of the will of the employer and the employee, while the same situation does not exist in the termination of the employment contract. The absence of a written form could lead to numerous abuses and legal uncertainty, especially for the employee.

The agreement must be in writing, signed by both contracting parties, the employer and the employee. Of course, the worker signs in person, although the possibility of having a proxy with a valid power of attorney sign for him or her is not excluded. If the employer is a legal entity, the agreement can be concluded on his behalf by a person who is authorized to do so by the statute, social contract, declaration of incorporation or other rules of the legal entity. This person can transfer this authorization by written power of attorney to another legally competent person. The employer - a natural person personally signs the agreement, and can transfer this authorization with a written power of attorney to

authorize another legally capable person.

Even after such a change, so that the employer is no longer obliged to create a program for dealing with redundant workers, this institute remained in compliance with Council Directive 98/59/EC of 20 July, 1998, on the harmonization of the legal regulations of the member states on the collective dismissal of redundant workers. Its meaning is focused on the participation of workers' representatives in the entire process of collective cancellation in all its stages and enabling the application of active employment measures to reduce or prevent the consequences of the cancellation of the employment contract. However, the procedure has been simplified for employers, because previous obligation was usually extremely complex and required a lot of time and causes many problems. At the same time the results in terms of actually solving workers' problems, such as employment elsewhere, were negligible.

Additional metadata

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

Sources

Citation

Eurofound (2015), Croatia: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Cyprus

Selection of employees for (collective) dismissals

Phase	Collective Dismissals Law, 2001 (Law 28(I)/2001)
Native name	Ν. 28(Ι)/2001 - Ο περί Ομαδικών Απολύσεων Νόμος του 2001
Type	Selection of employees for (collective) dismissals
Added to database	01 September 2015
Access online	Click here to access online

Article

Articles 5.1β (v) , 6, 8 of the Collective Dismissals Law, 2001 (Law 28(I)/2001)

Description

The Collective Dismissals Law obliges the employer who intends to proceed with collective dismissals (within 30 days, dismissals of at least 10 workers in companies with 21-99 employees, 10% in firms with 100-299 employees or at least 30 employees in firms with 300 or more staff) to consult in good time with the employees' representatives with the view to reaching an agreement. The employer must have completed the consultations with the employees' representatives before he/she notifies the relevant authority on the intention to proceed to collective dismissals, since he/she has to provide information to the relevant authority also on the outcome of these consultations (Article 6). Collective dismissals can take effect the earliest 30 days after the relevant authority has been notified (Article 8).

In order for the employees' representatives to be in the position to engage in a constructive manner in this consultations, all useful information has to be provided by the employer on time. In particular the employer has to communicate in written form i) the reasons for the intended redundancies, ii) the number and categories of affected employees, iii) the number and categories of all employees, iv) the time the redundancies shall take effect, as well as v) the criteria the employer is intending to use for the selection of employees to be declared redundant.

Even though the criteria for the the selection of employees to be declared redundant are subjected to consultations with the employees' representatives, the responsibility remains with the employer.

Commentary

The legislation is rarely activated in Cyprus, since the definition of collective dismissals requires the dismissal of at least 10 employees. However, during the economic and financial crisis, particularly in 2012 and 2013, an increased number of collective dismissals cases has been observed. The Labour Relations Department has reviewed more than 140 cases during these years.

Both Trade unions and the Labour Relations Department share the assessment that the legislation is more likely to be applied in a satisfactory manner in companies where labour relations are governed by a collective agreement, i.e. where trade unions are present, demand and ensure that the legislation is respected.

Additional metadata

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

Sources

Citation

Eurofound (2015), Cyprus: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Estonia

Selection of employees for (collective) dismissals

Phase	Employment Contracts Act
Native name	Töölepingu seadus
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment Contracts Act 89, 90, 93-94

Description

Before cancellation of an employment contract due to lay-off, an employer shall, where possible, offer other work to the employee, except in case of cessation of the activities of the employer or declaration of the employer's bankruptcy. The employer shall, where necessary, organise the employee's in-service training or change the employee's working conditions, unless the changes cause disproportionately high costs for the employer.

Upon cancellation of an employment contract, the employer must take into account the principle of equal treatment, while the employees' representative and employees who are raising a child under three years of age have the preferential right of keeping their job. This applies to individual as well as collective cancellation of employment contracts.

Collective cancellation of employment contracts is determined in the Employment Contracts Act paragraph 90: meaning the cancellation of contracts, within 30 calendar days due to lay-off, of the employment contract of no less than: 5 employees in an enterprise where the average number of employees is up to 19; 10 employees in an enterprise where the average number of employees is 20–99; 10 per cent of the employees in an enterprise where the average number of employees is 100 to 299; 30 employees in an enterprise where the average number of employees is at least 300.

Before termination of the employment contract the employer must seek the opinion of the employees' representatives or the trade union about the termination of the employment contract. The employer must take the opinion of the employees into account to a reasonable extent and must justify disregard for the opinion of the employees.

Although the employer may not terminate an employment contract with a pregnant woman or a woman who has the right to pregnancy or maternity leave and a father on paternity leave or a person who is on child care leave or adoptive parent leave, it is allowed upon cessation of the activities of the employer or declaration of the employer's bankruptcy, or upon termination of bankruptcy proceedings, without declaring bankruptcy, by abatement.

Commentary

No information available.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 5 Company size: 19 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Estonia: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Finland

Selection of employees for (collective) dismissals

Phase	The Employment Contracts Act (55/2001), Law on amending the Employment Contracts Act (32/2022)
Native name	Työsopimuslaki (55/2001), Laki työsopimuslain muuttamisesta (32/2022)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Ch. 7, Sec. 9-10 (55/2001) Ch 7, Sec 9 (32/2022)

Description

In case of (collective) dismissals, employee representatives are protected in that they cannot be dismissed before all posts in their job category are eliminated and no other suitable work is available for this person.

The employer may terminate an employee on pregnancy, special pregnancy, parental or care leave only if the employer's operations cease completely. Any dismissal of an employee who is pregnant or on family leave shall be deemed to have taken place on the basis of the employee's pregnancy or family leave, unless the employer can prove that there was some other reason.

Commentary

Some collective agreements may regulate further the order in dismissals, for example:

- In selecting candidates for collective dismissals, employers should take into account length of service and family circumstances.

- Preference in retention should be given to skilled personnel and those partly disabled due to work accidents.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government
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: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

France

Selection of employees for (collective) dismissals

Phase	Labour code
Native name	Code du travail
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

L.1233-5, L. 1233-6, L.1233-7, L.1233-17, R.1233-1, D. 1233-2, L. 1132-1

Description

In case of individual or collective dismissals for economic reasons, the employer needs to consider certain criteria for the selection of employees to be made redundant. If applicable, the employer applies the collective agreement's criteria for the implementation of an Job-saving plan (Plan de sauvegarde de l'emploi).

When no collective agreement applies, the employer has the responsibility to define selection criteria, which need to include the following elements as specified by article L. 1233-5:

- family expenses, especially with respect to single parents;
- seniority in the company;
- professional qualities;
- any situation that might make it difficult to find work (for instance, on account of age or disability).

The employer may give priority to one criterion as long as all the above are considered and can add other criteria to the list. However, article 1132-1 lays out a general principle of non-discrimination in employment relationships: it follows that the employer cannot use

the employee's origin, surname, place of residence, ethnicity, physical appearance, gender, sexual orientation, marital status, pregnancy, age, health status, disability, trade union membership, religious and political beliefs as selection criteria for dismissal.

According to article 1233-5, employers have a high degree of flexibility with respect to the application of selection criteria to the business units. Regardless of the workforce size and the dismissal figures, each employer (a single company, including its different business units, where appropriate) is entitled to set the scope of application of selection criteria by collective agreements. In this framework, it is possible to apply the selection criteria to a narrower scope than the entire company. In case no collective agreement is concluded in this respect, it is up to the employer to define the scope of application. In this case, the law limits the scope to at least the individual employment zone (zones d'emploi), in which one or more establishments of the company are located and affected by dismissal. It follows that criteria may vary between employment zones, which are set by the National Institute of Statistics and Economic Studies (INSEE) and the statistics services of the Ministry of Labour. According to the database managed by INSEE, an employment area is a geographic area in which the majority of the general workforce lives and works, and in which establishments can find the bulk of the workforce needed to fill the jobs offered.

Within 10 days after the termination of the contract, the redundant employee may ask the employer which criteria were applied in the dismissal. The employee needs to send a written letter delivered personally against discharge or by registered letter with acknowledgment of receipt (LRAR). The employer must reply to the employee, under the same modalities, within 10 days of the delivery of the letter.

Non-compliance with the selection criteria might lead to the employee receiving compensation.

Commentary

After the 2015 reform, the labour code was again amended in 2017 to increase the flexibility provided to employers to apply selection criteria. With the 2015 reform, only companies with at least 50 employees and 10 redundant people over a 30-days period could limit the scope of selection criteria through collective agreement. With the 2017 reform, all companies benefit from this provision regardless of their workforce size and dismissal figures.

Case law of the Supreme Court (Cour de cassation) – for collective dismissals of fewer than 10 employees – and the Council of State (Conseil d'Etat) – for collective dismissals of 10 employees and over – strictly controls that all the criteria are taken in consideration. An employer may not directly or indirectly exclude any of these criteria.

Additional metadata

Cost covered by	Employer
Involved actors other than national government	National government
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), France: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Germany

Selection of employees for (collective) dismissals

Phase	Works Constitution Act; Employment Protection Act
Native name	Betriebsverfassungsgesetz; Kündigungsschutzgesetz
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

95, 102 (Works Constitution Act); 1 III-V (Employment Protection Act)

Description

Under the Employment Protection Act, the employer may dismiss on operational grounds only those employees who cannot be voluntarily transferred to another department or establishment of the same employer even if they receive further training. The following social selection criteria have to be applied: tenure, age, family responsibilities, severe disability. Guidelines for selecting individuals in the framework of individual or collective dismissals (within 30 days, dismissals 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) require the agreement of the works council. In companies with more than 500 employees, the works council can request that guidelines for social selection are set up. If no agreement is reached, a mediation body decides.

When selecting employees for redundancy, a pool of comparable employees must first be identified before specific selection criteria are applied. The employer may in general only dismiss those employees who score the lowest marks when those criteria are applied. The social selection shall exclude employees rated vital to the further existence of the company because of their skills, competencies or performance.

Under the Works Constitution Act, the works council has co-determination rights regarding the establishment's guiding HR principles of hiring and firing. In companies with more than 1,000 workers the works council may demand that such guidelines are set up. The works council has information and consultation rights in cases of planned individual and collective dismissals; additional co-determination rights can be set up via a works agreement between the management and the works council.

The works council is not involved in the social selection, but is consulted on the list of potentially affected employees and may object to individual workers being on the list if the council finds that these do not to meet the criteria of social selection.

If an agreed social plan provides a list of selected workers, these workers do not hold the right to file a complaint under the Employment Protection Act.

Commentary

Following ECJ rulings from 2015 (Rivera and Balkaya-Kiesel), fixed-term workers, CEO and interns are also covered by the collective dismissal regulation.

Generally speaking, the implied social basis of the mechanism tends to protect more vulnerable workers. This may be in conflict with the aim of regaining economic viability through restructuring, a goal which may be shared by the works council in its endeavour to preserve jobs. Negotiations on restructuring are centred on a compromise between social and economic perspectives, and on designing the legal mechanisms by which the agreed outcome can be achieved.

Additional metadata

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

Sources

Citation

Eurofound (2015), Germany: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Greece

Selection of employees for (collective) dismissals

Phase

-Law 4808/2021 (Official 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 (Official Government Gazette A' 158/26.09.2023), "To strengthen work - Integration of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 - Simplification of digital processes and strengthening of the Work Card - Upgrading the operational function of the Ministry of Labour and Social Security and the Labour Inspectorate" -Law 1387/83 on collective dismissals; Law 3863/2010 on the New Social Security System and relevant provisions. Regulations on Labour Relations

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 από το Νόμο 5053/2023 (ΦΕΚ Α' 158.09.2023), "Για την ενίσχυση της εργασίας - Ενσωμάτωση της Οδηγίας (ΕΕ) 2019/1152 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 20ής Ιουνίου 2019 - Απλοποίηση ψηφιακών διαδικασιών και ενίσχυση της Κάρτας Εργασίας - Αναβάθμιση της επιχειρησιακής λειτουργίας του Υπουργείου Εργασίας και Κοινωνικής Ασφάλισης και της Επιθεώρησης Εργασίας" -Ν. 1387/1983: Έλεγχος Ομαδικών Απολύσεων και άλλες διατάξεις; Ν. 3863/2010: Νέο Ασφαλιστικό Σύστημα και συναφείς διατάξεις. Ρυθμίσεις στις Εργασιακές Σχέσεις
Type	Selection of employees for (collective) dismissals
Added to database	15 September 2015
Access online	Click here to access online

Article

-Law 4808/19.06.2021, Section IV: 'Regulations to Protect Work', Article 66: 'Protection from Dismissals' -Article 3 of Law 1387/1983; 74 paragraph 7 of Law 3863/2010

Description

Law 4808/2021, by virtue of art. 66, includes for the first time a list of cases of invalid dismissals, related to specific categories of employees: cases already provided by existing laws -war veterans and people with disabilities under a mandatory employment

relationship; members of the BoD of a union (for the period during their office and one year after); employees in military service; pregnant employees, and new mothers, during the pregnancy, and for a period of 18 months as of the birth date; cases formulated in the past years by case Law such as, dismissals in retaliation for the exercise of a legal right by the employee, and *newly introduced cases in line with other provisions of the new Labour Law -protection from dismissal of fathers and for a period of six months as of the birth date; of the retrained workers in tourism businesses; due to the exercise of rights against workplace discrimination, violence and harassment; to employees' rights of receiving or requesting to receive any type of legal leave; to flexible arangements available to parents and carers; to the dismissal of employees who exercise the 'right to disconnect' (teleworkers), or who refuse (to apply for) working time arrangements (changes in working status, or schedule).

-In the Greek law, the termination of an indefinite-term employment contract is an act not requiring justification and it is the right of both the employer and the employee. The exercise of this right is not uncontrolled and unlimited, and is subject to restrictions on the abuse of rights under article 281 of the Civil Code. If the termination is found to be abusive, then it is considered null and void.

In general, in case of dismissals due to operational reasons, there is a legal obligation of the employer to take into account social criteria. In the case of collective dismissals, this obligation is regulated in more detail.

The termination of an employment agreement on operational grounds is wrongful if the employer fails to take into account and evaluate the criteria of seniority, age, economic and family status during the selection of the employees for dismissal. This duty of care requires the dismissal to target those for whom the measure would be least burdensome. It is expressly provided that persons aged 55-64 years may not exceed 10% of the total number of dismissals. Also, the employer must notify the employees' representatives in writing of the selection criteria for dismissal.

In the case of collective redundancies and redundancies due to financial and logistical reasons, namely in the case of reorganisation of services or parts of the company or reduction of staff for economic reasons due to the company being in financial difficulties, an employer's decision to confront the looming economic crisis through redundancies is not judged in itself by the courts. However, there are controls, firstly on the causal link between this choice and the termination of a particular employee as a last resort for dealing with the company's problems, and secondly, on the way in which the employee is selected. This must be on the basis of objective criteria, namely with good faith and in accordance with honest practices. In particular, when choosing an employee to be made redundant from among employees belonging to the same category and job description

who are of the same standard in terms of ability, qualifications and performance, the employer must also take into account the social and financial criteria of seniority. This is assessed in terms of the duration of employment in the specific company (without taking into consideration previous employment), age, family status, efficiency, and possibility of finding another job. In this last case, it is checked whether it is possible for the employer to offer another job to the employee, even in a lower position than the one currently held, if such a vacancy exists in the company and if the employee to be made redundant is suitable to fill it.

Under the Greek law (Law 3863/2010), collective dismissal is defined as dismissals affecting:

- more than six employees in companies with 20 to 150 employees; and
- more than 5% of the workforce or more than 30 employees in companies with more than 150 employees.

Commentary

By virtue of Law 4808/2021, there is a reversal of the burden of proof in favour of the employee. 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 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. In addition, by virtue of Law 4808/2021, a similar prohibition as that of not dismissing a pregnant woman, or a lactating mother, unless there is a great reason, is introduced for the working father, for six months after the birth, provided, also, that there is a great reason. The Law explicitly states that by no means a reduction of performance, due to the mother’s pregnancy or the family obligations, of the working parent can be considered as a great reason.

There are many examples in the case law of redundancies being annulled because the employer did not take the social criteria into account, or did not inform the employees’ representatives in writing of the criteria for redundancies. For example, supreme court judgment 13/2014 annulled the dismissal of a worker as the company did not take into account the social and other criteria when choosing whom to dismiss. In particular, the employee had 15 years of service, was married with three minor children, and was replaced by a younger worker with fewer years of service and no family responsibilities. Therefore, according to the court, the dismissal was not based on objective criteria and was thus void, being manifestly and excessively contrary to good faith and the social and economic purpose of the employer's right to terminate the employment contract.

Additional metadata

Cost covered by	None
Involved actors other than national government	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), Greece: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Ireland

Selection of employees for (collective) dismissals

Phase	Unfair Dismissals Acts 1977 to 2007; Employment Equality Acts 1998 to 2015
Native name	Unfair Dismissals Acts 1977 to 2007; Employment Equality Acts 1998 to 2015
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

1977 to 2007 Acts: 6; 1998 to 2015 Acts: 6(2)

Description

The first rule of redundancy is that the role/function that the employee(s) performs is redundant, not the employee(s) in person. This is the 'impersonality' requirement. It must always be demonstrated that the role or function of the worker(s) is redundant.

Selection of employees for redundancy must meet fairness criteria. It must not be discriminatory according to legally defined acts of discrimination (gender, marital status, family status, sexual orientation, religion, age, disability, race, member of a travelling community) or on the ground of trade union activity. If redundancy selection is discriminatory, the discriminated party can take a case for unfair or discriminatory dismissal. There is no special protection in law for certain groups of workers in the context of redundancy selection. It is most common for voluntary redundancy to be the first option; compulsory redundancies would follow if the uptake on voluntary redundancy is not sufficient.

It is common for a 'last in first out' (LIFO) redundancy selection criterion to be used. The LIFO principle is also common within collective agreements. However, an employer is not

restricted to use other redundancy criteria, once it does not contravene the anti-discriminatory legal provisions. For example, an important requirement for restructuring is to retain key skills, therefore a division of the company's operation may be redundant if the skill set in that division is no longer required.

An unfair dismissal claim can be brought to an Adjudication Officer of the Workplace Relations Commission (and then on appeal to the labour court). If the dismissal is found to be unfair, compensation of up to two years' pay can be awarded.

If a redundancy selection is contrary to an agreed procedure at the employment, e.g. the last-in-first-out rule, the affected party can also bring an unfair dismissal claim.

Unfair dismissal law was amended in 2019 to incorporate protection against dismissal for employees exercising their rights under the Parent's leave and benefit act, 2019.

Commentary

This regulation applies to all redundancy situations, individual and collective.

At unionised employers, selection for redundancy can be agreed via the trade union(s). This is not a legal requirement but selection can be facilitated through trade union involvement. Works councils are not as prevalent as union involvement. Theoretically works councils could be involved.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Works council
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), Ireland: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Italy

Selection of employees for (collective) dismissals

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; Legislative decree 14 September 2015, No. 148; Legislative decree 12 January 2019, No.14
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; Decreto Legislativo 14 Settembre 2015, n. 148; Decreto Legislativo 12 gennaio 2019, n. 14
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Law 23 July 1991, no. 223 -5; Legislative decree 14 September 2015, No. 148, art. 24 and 24-bis; Legislative decree 12 January 2019, No.14 - art. 368

Description

The criteria for the selection of workers involved in collective dismissals (that is the dismissal of at least five employees within 120 days in companies with more than 15 employees) are to be set within the context of the collective dismissal procedure (that is the mandatory procedure that has to take place in case of collective dismissals) and, ultimately, in the agreement which might be reached at the conclusion of the procedure. In the case the procedure ends up with no agreement, the selection criteria are those established by article 5 of law 223/1991, which identifies the following list:

- number of family members and family commitments;
- length of service;
- technical, productive and organisational needs.

Selection criteria should be applied on an equal basis, meaning that none of them should prevail over the others, that is without the employer having the power to assign each of them a different weight, so as to arbitrarily alter the result of the choice.

Jurisprudence has set limits to the ability of the parties to identify selection criteria for dismissals, stating that selection criteria identified in union agreements shall comply with the principle of non-discrimination based on union, political, religious, racial, sexual, and language reasons, as well as with the rationality principle (that is agreed criteria must possess the characteristics of objectivity and generality).

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
Involvement (others)	None
Thresholds	Affected employees: 5 Company size: 16 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Italy: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Latvia

Selection of employees for (collective) dismissals

Phase	Labour law
Native name	Darba likums
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

47, 108, 109, 110

Description

In the case of a reduction in the number of employees (individual and collective dismissals), employees selected to continue employment are chosen among those who have higher performance results and higher qualifications. If performance results and qualifications do not substantially differ, the law also details selection criteria for further selection; those kept in employment are workers who:

- have worked for the relevant employer for a longer time;
- while working for the relevant employer, have suffered an accident or have fallen ill with an occupational disease;
- are raising a child up to 14 years of age or a disabled child up to 18 years of age;
- who, as parents, is in the care of an adult person with a childhood disability who needs special care;
- have two or more dependants;
- whose family members do not have a regular income;
- are disabled persons or are suffering from radiation sickness;
- have participated in the rectification of the consequences of the accident at the Chernobyl Atomic Power Plant;

- have less than five years remaining to reach retirement age;
- without discontinuing work, are acquiring a professional qualification in an educational institution;
- have been granted the status of politically repressed person (special status granted, by special Law, to people who suffered from 'Communist and Nazi totalitarian regimes and the political repression of these regimes against Latvian citizens and residents for their political beliefs or political activity').

None of the above mentioned preferences have priority in comparison with the others.

If the number of employees is being reduced, an employer cannot give a notice of dismissal to a pregnant woman, to a woman within the first year after giving birth or to a woman who is breast feeding during the whole period of breast feeding, but not longer than up to two years of the age of the child.

An employer is forbidden to give notice of termination of employment to an employee who is member of a trade union without prior consent of the relevant trade union (except if the employee was under the influence of alcohol, narcotic or toxic substances when performing work), if an employee who previously performed the relevant work has been reinstated at work, if the employer – legal person or partnership – is being liquidated, and during the probation period.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
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), Latvia: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Lithuania

Selection of employees for (collective) dismissals

Phase	Labour code No XII-2603
Native name	Darbo kodeksas Nr. XII-2603
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour code (57)

Description

In cases of individual dismissals, collective dismissals on economic and technical grounds, and restructuring plans for the workplace, the employer approves selection criteria for the redundancy in coordination with the works council or, in the absence thereof, the trade union. Selection and proposal for dismissals are carried out by a committee consisting of the employer and at least one member of the works council. In establishing the selection criteria, priority to keep the jobs with respect to all other employees of the same specialisation must be given to employees (article 57):

- with injuries or occupational diseases from the workplace;
- with more than three children under the age of 14, with any children under the age of 14 for situations of single parenthood, with a disabled child under the age of 18 or with caring responsibilities for other family members recognised as having less than 55% of capacity for work or family members earning an old-age pension and recognised as having a high or average level of special needs;
- with at least 10 years of continuous service in the same workplace (except for employees who have reached retirement age and become entitled to a full old-age pension while working for the employer);
- with no more than three years left until the statutory age for old-age pension;

- with an established right in the collective agreement;
- with responsibilities for employee representation in management bodies.

This right of priority applies to employees whose qualifications are not lower than those of other employees of the same specialisation working in that company.

Commentary

No information available.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Trade union Works council
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), Lithuania: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Luxembourg

Selection of employees for (collective) dismissals

Phase	Labour Code
Native name	Code du travail
Type	Selection of employees for (collective) dismissals
Added to database	17 December 2015
Access online	Click here to access online

Article

Art.L. 166-2 to Art. L.166-9

Description

The Labour Code does not provide any criteria regarding the selection of employees as part of a collective dismissal. However, in companies with a joint committee (comité mixte), the employer must reach an agreement with staff representatives with regards to the selection of employees to be dismissed.

In the framework of the law of 23 July 2015 reforming employee representation in companies (Loi du 23 juillet 2015 portant réforme du dialogue social à l'intérieur des entreprises) (EurWork, Luxembourg: Reform of employee representation in companies, 15 December 2015) it should be noted that joint committees will cease to exist after work place elections which take place after 1 January 2016 (and at the latest after the work place election scheduled of 2019). As from these elections, the tasks and duties assigned to joint committees will be transferred to the staff delegations in companies which had at least 150 staff during the 12 months preceding the first day of the posting of the announcement of elections. Until these elections, the joint committees currently in place will continue to carry out their tasks.

Information on the number and categories of employees concerned

In cases of dismissal of at least 7 employees within 30 days or at least 15 employees within 90 days, the employer has to inform and consult the employees' representatives including the staff committee (délégation du personnel) or the joint committee (comité mixte) on its redundancy project. Employers must provide written information including the reasons for the projected collective redundancies, the number and categories of employees concerned, the criteria selected to lay off employees and any compensation packages proposed. Then, the employer must negotiate a social plan with the employees' representatives and representative unions if the employer is bound to a collective agreement. In this framework, social partners may agree on the criteria of selection.

Co-determination if a joint committee exists

In companies with a joint committee (in organisations with at least 150 employees), the employer must reach an agreement regarding the selection of employees with staff representatives. According to the Labour Code, the joint committee exerts an executive power whereby it can co-determinate or provide modifications to the criteria of selection for hiring, promotion, transfer, dismissal and, when applicable, the priority criteria for admission to early retirement of employees. With a view to fulfil this regulation, a consultation process has to take place between the employer and employees' representatives in order to establish the selection criteria.

Commentary

Case law argues that the employer is responsible for his/her business and thus free to decide on restructuring measures leading to job cuts, as long as these actions are not a result of a culpably thoughtless manner and he/she is not using restructuring merely as a pretext for firing staff. Consequently, the employer is not required to justify why he/she has chosen to dismiss an employee rather than another. However, although he/she is free to take this decision, any selection of employees must not be discriminatory.

Additional metadata

Cost covered by	None
Involved actors other than national government	Public employment service Works council
Involvement (others)	None

Thresholds	Affected employees: 7 Company size: 7 Additional information: There are two company eligibility thresholds: In cases of dismissal of at least 7 employees within 30 days or at least 15 employees within 90 days.

Sources

Citation

Eurofound (2015), Luxembourg: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Malta

Selection of employees for (collective) dismissals

Phase	Cap. 452 - Employment and Industrial Relations Act, 2002; 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 281 of 2017)
Native name	Kap. 452 - Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, 2002; Leġislazzjoni Sussidjarja 452.80 - Regolamenti dwar Sensji Kollettivi (Harsien ta' l-Impjiegi) (Avviż Legali 428 tal-2002 kif emendat bl- Avviżi Legali 427 u 442 tal-2004, u 281 ta' 2017)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Employment and Industrial Relations Act, 2002 - Article 36.4; Collective Redundancies (Protection of Employment) Regulations - Whole regulations

Description

The Collective Redundancies (Protection of Employment) Regulations does not specify the criteria for the selection of those employees who will be made redundant. Nonetheless, within seven working days from the day on which the employees' representatives have been notified of the intended collective redundancies (10 employees in companies with more than 20 and fewer than 100 persons, 10% of the workforce if between 100 and 299 persons are employed; and 30 employees or more if 300 persons or more are employed), the employer has to inform the employees' representatives in writing about the proposed criteria for the selection of the employees to be made redundant.

However, in the event of termination of employment on grounds of redundancy the rule of 'last in first out' is applied. This means that the last person who was hired in the category of employees affected by redundancy should be dismissed first. In those cases involving companies which are not a limited liability company or a statutory body, and where the employee to be made redundant is related to the employer by up to the third degree of consanguinity, the employer may instead of terminating the employment of such person terminate that of the person next in line.

Commentary

Labour legislation and relating amendments are discussed at policy formulation stage, in the tripartite Employment Relations Board (ERB). Members forming this board come from trade unions, employers' associations and the government.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Trade union Other
Involvement (others)	Employment Relations Board; Department of Industrial and Employment Relations
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Malta: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Netherlands

Selection of employees for (collective) dismissals

Phase	Royal decree on dismissal, 1 July 2016; Civil code
Native name	Ontslagregeling van 1 juli 2016; Burgerlijk Wetboek
Type	Selection of employees for (collective) dismissals
Added to database	07 August 2015
Access online	Click here to access online

Article

Article 2a, 4-6 and 11 of the Royal decree on dismissal; Article 7:670 paragraph 2 through 4, Civil code

Description

Principle of proportionality Since 1 July 2016, a new decree on dismissal is in force, as an addition to the new dismissal legislation entering into force on 1 July 2015 (see New legislation on work and security). The decree mainly aims to clarify the new legislation. In case of exchangeable jobs, in principle, the last-in-first-out system applies within the five age categories (15-25, 25-35, 35-45, 45-55 and 55+). This means that in principle the age distribution of employees within a company does not change after a collective dismissal (if 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 within 3 months due to reorganisation for economic reasons). There are several exceptions to the basic rules, giving the employer some room for selection.

Since 2019, a government employer (the state; the provinces; the communities; the water boards; the public bodies for profession and business; the other public bodies to which regulatory powers have been conferred by virtue of the Constitution; the European groupings for territorial cooperation with a registered office in the Netherlands; the other legal entities established under public law; legal persons other than those established under public law, of which a body is vested with public authority, whereby the exercise of

that authority constitutes the core activity of the legal person) needs to inform the Employee Insurance Agency (Uitvoeringsinstituut Werknemersverzekeringen UVW) of the reasons for the reorganisation and the job cuts (Royal decree on dismissal, art.2a).

Main exceptions to the principle of proportionality for the selection of employees in collective dismissals are:

- A worker who is indispensable for the company. Such an employee can be skipped over for the next employee in case of a collective dismissal. The appeal to this exception cannot result in a dismissal, if the number of workers in the 15-25 and 55+ age brackets increases by more than 10%.
- A worker who is detached to a third-party employer, perhaps through a secondment agency. In this case, a secondment agency that intends to engage in a collective dismissal is obliged to propose a replacement for the employee in secondment, and has to retain that employee if the third party does not agree to the replacement.
- Workers with disabilities.

Meanwhile, the last-in-first-out principle can be deviated from in collective labour agreements.

According to articles 4-6 of the Royal decree on dismissals, the intention to replace workers with permanent contracts with workers without permanent contracts or workers who perform similar work with lower compensations is not a legitimate ground for (collective) dismissals. This is the case even if this is considered by management as a necessity for doing business. However, replacement of workers with permanent labour contracts by sole traders that are registered with the chamber of commerce is a legitimate ground for collective dismissals, if it is necessary from a business perspective.

Different principles agreed by social partners

Under certain conditions, the employer may deviate from the cap of 10% of dismissed workers established in the principle of proportionality. This can only be done if it is included in the collective agreement. The rules of the principle of proportionality do not apply if other rules apply. Other rules can be agreed upon only if there is an independent and impartial collective labour agreement committee that tests the dismissal beforehand.

Dismissal of sick and pregnant employees According to the Civil code, employers are not allowed to dismiss the employees who are pregnant or on sick leave. This is the case for both individual and collective dismissals, as well as when an entire department is being dismissed. In the latter case, the employer is required to attempt to find suitable work for the employee in another department when he or she returns from sick leave or

pregnancy.

There are some conditions that make it possible for employers to dismiss employees on sick leave:

- If the employee is dismissed immediately due to grave misconduct or during his/her probation period.
- The employee agrees to the dismissal in writing.
- The employer has filed for bankruptcy or suspension of payments.
- The employee has reached retirement age.
- The enterprise is declared bankrupt.
- The employee refuses to comply with his or her obligations regarding re-integration in the labour market.

Commentary

Employer organisation VNO-NCW stated that in improving dismissal regulation, it is important to look for opportunities to offer employers the option to deviate from the last-in-first-out principle. The organisation would prefer the condition if the selection of employees to be dismissed could increasingly take place on the basis of quality.

Additional metadata

Cost covered by	Not available
Involved actors other than national government	Public employment service 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), Netherlands: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Norway

Selection of employees for (collective) dismissals

Phase	Working Environment Act
Native name	Arbeidsmiljøloven
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

15-7

Description

Employees may not be dismissed unless this is objectively justified based on circumstances relating to the undertaking, the employer or the employee. Dismissal due to curtailed operations or rationalisation measures is not objectively justified if the employer has other suitable work in the undertaking to offer the employee.

The obligation to look for other suitable work was expanded 1 January 2024. If the undertaking is part of a group of company, the employer also must look for suitable work in the other undertakings in the group. A legal definition of "group of companies" is given in section 8-4 (4). Decisive is whether the parent company has decisive influence on the undertaking.

An objective assessment is required when choosing which employees are to be made redundant in case of dismissals of one or more employees according to case law based on the Working Environment Act.The choice of employees is based on a number of factors and different factors carry different levels of importance, depending on the particular aspects of each case, each company's needs and the market situation. Factors laid down by an agreement between the management and shop steward would normally be seen to be relevant, but courts can rule that other factors should prevail. Relevant factors may

include length of service (seniority), qualifications, suitability, disadvantages of being made redundant for the employee and any relevant social factors such as obligations to support family members.

For companies bound by collective agreements, seniority will usually be the dominant principle, but other factors can be included if they are considered to be just. Shop stewards also have a special protection based in Basic Agreements (collective agreements at the cross-sectoral level) stating that the position should be taken into consideration when deciding to dismiss this person.

Commentary

In addition, rules regarding which employees are to be made redundant may be contained in collective agreements. For example, pursuant to the collective agreement between the NHO (Confederation of Norwegian Business and Industry) and the LO (the Norwegian Federation of Trade Unions), length of service is the main criterion in relation to redundancies involving unionised employees. However, the length of service criterion can be deviated from if the reason is objectively justified.

Additional metadata

Cost covered by	None
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), Norway: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Portugal

Selection of employees for (collective) dismissals

Phase	Labour Code (Law 7/2009 of 12 February); Law 27/2014 of 8 May
Native name	Código do Trabalho (Lei 7/2009 de 12 de Fevereiro); Lei 27/2014 de 8 de Maio
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

Labour Code, articles 360 (2c), 368 (2)

Description

The employer intending to proceed with collective redundancies must announce this intention, in writing, informing about the criteria for the selection of workers to be dismissed. Collective dismissal is defined as the dismissal of at least two workers in micro and small companies, and at least five workers in larger companies.

List of criteria used to determine which employees are selected for dismissal:

- lower level of performance, pursuant to criteria pre-disclosed to the employee;
- lower academic and professional qualifications;
- higher cost of keeping the employment relationship in place;
- lower work experience in the job;
- lower seniority.

Commentary

For more information on collective dismissal see 'definition of collective dismissal'.

Additional metadata

Cost covered by	None
Involved actors other than national government	National government Other Trade union Works council Employer organisation
Involvement (others)	Directorate General for Employment and Labour Relations (Direcção-Geral do Emprego e das Relações de Trabalho - DGERT)
Thresholds	Affected employees: 2 Company size: 2 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Portugal: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Romania

Selection of employees for (collective) dismissals

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	Selection of employees for (collective) dismissals
Added to database	15 July 2015
Access online	Click here to access online

Article

69 (3), 76 (c)

Description

In case of collective dismissal (i.e., dismissal 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 larger firms), there are criteria for selection of workers both in collective agreements and legislation.

The criterion provided by the Labour Code for the selection of employees for collective dismissals is professional performance. In addition, collective agreements may provide a number of social criteria. However, according to Article 69 (3) of the Labour Code, these criteria would be applied to select employees only after professional performance has been assessed.

According to Article 76 of the Labour Code, the criteria for determining the order of priorities should be expressly included in the dismissal decision. This should not be limited to merely providing the number of the criteria but also the reason for why, according to these criteria, the employee in question was chosen to be dismissed.

The Labour Code does not include any provisions on the selection criteria for individual dismissal. Employers generally apply, just as in the case of collective redundancies, the results of the periodic performance assessment.

Commentary

Collective agreements are bargained with the representative trade union or, if there is no such trade union, with the representatives directly elected by the workers. These often include social criteria for selection of employees in the event of a collective dismissal, such as:

- if the measure could affect two spouses working in the same enterprise, the lower-income spouse will be dismissed with priority. This order of preference cannot lead to firing a person whose position would not have been targeted by the dismissal;
- the measure should be addressed, first of all, to those persons who do not have children in their care;
- the measure should only lastly affect women who have children in their care, widowers, divorced men having children in their care, those who are the sole providers for their family, as well as those employees, both men and women, who still have three more years to work, at the most, before retirement.

However, the statutory priority criteria (namely competence, based on the employee performance assessment) take precedence over criteria agreed through collective agreements. Collective agreements cannot deviate from the statutory criteria.

The labour courts have acknowledged that the use of selection criteria is not necessary if the department is dissolved entirely. If the entire department is dissolved, the dismissal is valid even if no selection procedure has been followed, because in this case the employer has nothing to select. As a result, the use of selection criteria is only necessary in cases where some of the employees are kept on staff. If all employees of a department are dismissed, the dismissals are valid even if the employees affected have not been subject to a performance assessment.

Additional metadata

Cost covered by	None
Involved actors other than national government	Trade union Other

Involvement (others)	Representatives of employees, if there is no trade union
Thresholds	Affected employees: 10 Company size: 21 Additional information: No, applicable in all circumstances

Sources

Citation

Eurofound (2015), Romania: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Slovenia

Selection of employees for (collective) dismissals

Phase	Employment Relationship Act (ZDR-1)
Native name	Zakon o delovnih razmerjih (ZDR-1)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

102 and 112-117

Description

The employer shall draw up a proposal for redundancy selection criteria in case of collective dismissals (within 30 days, dismissal of at least 10 employees in companies with 21-99 workers, at least 10% in companies with 100-299 workers and at least 30 dismissals in lager firms).

In agreement with the trade union at the employer, the employer may draw up their own redundancy selection criteria instead of using the criteria laid down in the collective agreement. When defining redundancy selection criteria, in particular the following shall be taken into account:

- the worker's professional education and/or qualification for work and the necessary additional knowledge and skills,
- the worker's work experience,
- the worker's job performance,
- the worker's years of service,
- the worker's health condition,
- the worker's social status, and

- whether the worker is a parent of three or more minor children or the sole breadwinner in a family with minor children.

When determining workers who will become redundant, under the same criteria workers with a worse social status shall be given priority in preserving their employment. The temporary absence from work of a worker due to illness or injury, due to caring for a family member or for a severely disabled person, or due to parental leave or pregnancy may not be a criterion for the selection of the workers that are to be made redundant.

The employer cannot dismiss works council members, trade union representatives, board members or other such officials on duty and until a further year after the expiry of their functions without the consent of the union.

Older workers who have reached the age of 58 or workers who only have up to five years left until the pension qualifying period condition is met may not be dismissed without their agreement. However, some exemptions apply for workers who are guaranteed the right to unemployment benefits until they fulfil the conditions for old-age retirement, who were offered new appropriate employment with the employer, who were employed when they had already fulfilled the conditions for protection against cancellation of the employment contract and in the case of compulsory winding-up of the company.

An employer cannot cancel the employment contract of a pregnant worker or a breastfeeding mother for up to one year of the child's age and for parents on parental leave uninterruptedly in the form of full absence from work and until one month after the end of such leave.

Disabled persons no longer enjoy absolute protection against cancellation of the employment contract. The employer may cancel the employment contract of a disabled person upon the agreement of the Pension and Disability Insurance Institute's commission if the employer has no appropriate job for that particular disabled person.

Commentary

No information available.

Additional metadata

Cost covered by Not available

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

Sources

Citation

Eurofound (2015), Slovenia: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Spain

Selection of employees for (collective) dismissals

Phase	Statute of Workers' Rights
Native name	Estatuto de los Trabajadores (ET)
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

51

Description

Employee representatives (trade union section, works council or workers' delegate) must be the 'last out' in collective dismissals (where, within a period of 90 days, more than 5 employees are dismissed if dismissals affect the entire workforce; at least 10 employees in companies with fewer than 100 employees; 10% of the employees in companies between 100 and 299 employees; and 30 employees in companies with 300 or more employees). Senior executives cannot be dismissed as part of a collective redundancy if they are hired on a so-called high management contract (contrato de alta dirección).

Factors such as an employee's age, length of service, personal circumstances and other criteria are taken into account when deciding which employees are going to be made redundant. However, these factors are not explicitly mentioned in the law. Article 51.2 forces the employer to detail in the notification of collective dismissals the criteria taken into consideration to select the workers to be dismissed. Criteria have to be objective and cannot hide any discrimination.

Commentary

The regulation aims to ensure effective exercise of employees' representatives rights by establishing that they will be the 'last out' in collective redundancies. As a result of this provision, regulation expects that employees' representatives will have more freedom to protect worker's rights in case of dismissals. This provision has not been questioned or discussed.

Additional metadata

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

Sources

Citation

Eurofound (2015), Spain: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin

Sweden

Selection of employees for (collective) dismissals

Phase	Employment protection act (1982:80)
Native name	Lag (1982:80) om Anställningsskydd
Type	Selection of employees for (collective) dismissals
Added to database	08 May 2015
Access online	Click here to access online

Article

22

Description

Under the order of priority rules, employees with a longer period of employment have priority to stay in the company over employees with a shorter period of employment. This is commonly referred to as the 'last-in-first-out' principle. Based on the aggregate period of employment within the organisation, a seniority list is drawn up for each unit and for each group of employees who belong to the same collective agreement. If employees have an equal length of employment, priority to stay is given to the older employee.

One important condition for continued employment is that the employee has sufficient qualifications for one of the alternative posts left in the unit after the structural reorganisation. However, according to the law, the employee only needs to fulfil certain minimum requirements, i.e. they do not have to be the best suited for a particular post to be entitled to continued employment.

Changes were made to this legislation as a result of agreements between the peak-level social partners in 2022. The changes include an amendment to the last-in-first-out principle as detailed above. Companies can now excempt three workers from this principle, if they are of particular importance to the continued operations. Previously, organisations up to 10 employees could make two exceptions.

Workers with disabilities and union representatives usually enjoy special protection against being chosen for redundancy. Selection based on sex, nationality, union membership or similar grounds is illegal.

Commentary

If there is a collective agreement in place, the parties are allowed to stipulate other criteria than in the Employment protection act. Most importantly, upon the announcement of the dismissals, further derogations may be agreed upon by the employer and the local union. As the employer often wants to dismiss employees by other criteria than in law or collective agreement and the unions are free to agree on any (non-discriminatory) alternative selections, this provides the unions with a very strong negotiating lever. This may, for example, secure compensation for older dismissed workers. If there is no collective agreement at the affected workplace, the employer must act in accordance with the order of priority rules as stipulated in the Employment protection act.

Employer organisations have long wished to see the Act reformed to allow for more flexibility, which is opposed by trade unions. As a result of a compromise with the Centre Party and the Liberals, the government tasked social partners to present a joint suggestion for amending the law. The social partners negotiated and (with the exception of the Swedish Trade Union Confederation) reached an agreement in the autumn of 2020 (available here), which is currently in the process of being redrafted into a legislative proposal by the government.

One of the key principles in the Employment protection act is the 'last-in-first-out' rule, whereby companies needing to restructure / lay off staff have to consider the employment tenure, meaning that the last one to be hired should be the first one to be laid off. Under the new law, 'last-in-first-out' will still be the guiding principle in the event of a shortage of work. However, if the parties cannot agree on an order of precedence, the employer may by law exempt three employees from the right to continued employment. An employer who is bound by the main agreement may instead exclude three blue-collar workers and three white-collar workers per operating unit, or 15% of the blue and white-collar workers whose employment may be terminated. However, the exemption may not exceed 10% of the workers at the operating unit. Employers with only one operating unit covered by the agreement can instead choose to exclude a total of 4 employees. Another significant change in the new proposals is that, in the case of disputes over unfair dismissals, the employer would not always have to pay the salary of the affected employee until the issue is resolved, as is the case today. It would also become more difficult in general for employers to dismiss employees for ‘personal’ reasons, and there would be greater opportunities for employers to get funds for adjustment and skills support for staff, even when they are not covered by collective agreements. The law was passed through the

parliament and the amended act entered into force on 30 June 2022, and the specific amendment regarding the last-in-first-out principle entered into force on 1 October 2022.

Additional metadata

Cost covered by	None
Involved actors other than national government	Employer organisation Trade union
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: Selection of employees for (collective) dismissals, Restructuring legislation database, Dublin