

## Romania

# Selection of employees for (collective) dismissals

<b>Phase</b>	Labour Code, Law no. 53/2003, republished in the Official Gazette of Romania no. 345 dated 18 May 2011
<b>Native name</b>	Codul muncii, Legea nr. 53/2003, republicată în Monitorul Oficial nr. 345 din 18 mai 2011
<b>Type</b>	Selection of employees for (collective) dismissals
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## 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

<b>Cost covered by</b>	None
<b>Involved actors other than national government</b>	Trade union Other

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

## Sources

- [Court of Appeal Timisoara, Section of labor and social insurance disputes, Civil Decision no. 1194 of 25 April 2012 \[Concediere colectivă. Inutilitatea aplicării criteriilor de prioritate la concediere în cazul desființării integrale a unui departament sau unei structuri distincte din cadrul unității\]](#)~~~ [Court of Appeal Ploiesti, Civil Section I, Civil Decision no. 4064 of 4 December 2012 \[Concediere colectivă. Evaluarea realizării obiectivelor de performanță. Aplicarea criteriilor de concediere\]](#)~~~ [Labour Code, Law no. 53/2003 \[Codul muncii, Legea nr. 53/2003\]](#)~~~ [Court of Appeal Timisoara, Section of labor and social insurance disputes, Civil Decision no. 1194 of 25 April 2012](#)~~~ [Court of Appeal Ploiesti, Civil Section I, Civil Decision no. 4064 of 4 December 2012](#)~~~ [Labour Code, Law no. 53/2003](#)~~~ [Codul muncii, Legea nr. 53/2003](#)~~~

## Citation

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