International Employment Lawyer

Guide to Restructuring a Cross-Border Workforce

Croatia

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A.Reduction in Workforce

1. Is there a concept of redundancy - based on a shortage of work or other economic reasons - as a justified reason to dismiss employees in your jurisdiction? If so, how is it defined?

The Croatian Labour Act (The Act) recognises the concept of redundancy. The employer may terminate the employment agreement when there is no longer a need for the performance of the particular work due to economic, technological or organisational reasons. This type of termination is business-related dismissal. Business-related dismissal is one of the regular types of termination of employment.

2. In brief, what is the required process for making someone redundant?

The termination must be made in writing and must include a written statement of reasons for termination. It must be duly delivered to the employee.

An employer that employs more than 20 employees must consider the following criteria when deciding on redundancy: the duration of the employment relationship; the age of the employee; and the financial support obligations the employee has towards his or her dependents.

If there is a workers' council, the employer must consult with the council before deciding to make an employee redundant.

3. Does this process change where there is a "collective redundancy"? If so, what is the employee number threshold that triggers a collective redundancy?

The procedure differs in the case of a collective redundancy. The threshold is the following: where, within 90 days, it is likely that at least 20 employees will no longer be required, and where five out of 20 employment agreements would end through a business-related dismissal, the employer must follow the rules for a collective redundancy.

Employees whose agreements would be terminated by mutual termination on the employer's initiative are counted within the threshold of 20 employees.

4. Do employers need to consult with unions or employee representatives at any stage of the redundancy process? If there is a requirement to consult, does agreement need to be reached with the union/employee representatives at the end of the consultation?

If the threshold for collective redundancy is met, the employer must consult the workers' council.

The agreement does not need to be reached at the end of the consultation for the employer to complete the redundancy process. After the consultation, the employer must notify the Croatian Employment Service (the Employment Service) of the consultation, and deliver to the Service the written statement of the workers' council.

The employment relationship with redundant employees cannot be terminated within 30 days after this notification to the Employment Service.

5. If agreement is not reached, can the restructure be delayed or prevented? If so, by whom?

The Employment Service may attempt to ensure continuity of employment. They may issue a written order to the employer to postpone the termination of labour agreements for all or certain employees who have been made redundant, for a maximum of 30 days.

6. What does any required consultation process involve (ie, when should it commence, how long should it last, what needs to be covered)? If an employer fails to comply with its consultation obligations, what remedies are available?

The consultation process must be initiated before the redundancy decision has been made and early enough to enable the council to make remarks and proposals and to have a genuine impact on the decision-making process. The employer must provide the workers' council with adequate information on:

- the reasons that employees may become redundant;
- the total number of employees and the number, titles, and positions of employees who may be made redundant;
- the criteria for selecting such employees;
- the amount and method of calculating severance pay and other benefits for employees; and
- the measures taken to take care of employees who are made redundant.

If the employer fails to comply with its consultation obligations, the decision made is deemed void. Employees who were made redundant may file a wrongful termination claim seeking compensation and reinstatement of their work position.

Moreover, if the employer does not provide the workers' council with the above-mentioned information, he can be fined up to 7,960 EUR.

7. Do employers need to present an economic business rationale as part of the consultation with unions/employee representatives? If so, can this be challenged and how would such a challenge normally be made?

The employer needs to present the economic rationale as part of a consultation with the workers' council. The employee can file a claim against the decision to the court if he or she can prove the conditions for collective redundancy have not been met.

In established case law, Croatian courts generally recognise the discretionary right of the employer to assess the need for a collective redundancy and to organise the working process according to the requirements of his or her business operation.

8. Is there a requirement or is it best practice to consult employees individually (whether or not the employer is also legally required to collectively consult employees)?

The Act does not require employers to consult employees individually.

9. Are there rules on the selection of individual employees for redundancy?

The employer must take into account the duration of the employment relationship, his or her age and the financial support the employee is providing to his or her dependents.

10. Are there any specific categories of employees who an employer is prohibited from making redundant?

The employer is not allowed to initiate redundancy against a woman during her pregnancy or a person using maternity, parental, adoptive, paternity or similar leave, leave for employees who have given birth or employees who are breastfeeding, and leave or part-time workers due to childcare for children with with severe developmental disabilities. This also applies to within 15 days of the conclusion of the particular leave or part-time work.

11. Are there categories of employees with enhanced protection (eg, union officials, employees on sick leave or maternity/parental leave, etc)?

Yes, the following categories of employees may only be terminated with prior approval of the workers' council or a union representative:

- member of the workers' council;
- an unelected candidate for the workers' council within three months after the election;
- an employee with a disability;
- an employee aged over 60;
- an employee representative in the body of the employer; and
- the categories from question 10 (maternity leave, etc) and possibly other categories of employees prescribed in specific legislation.

12. What payments are employees entitled to when made redundant? Do these payments need to be made within a specified period? Are there any other requirements, such as giving contractual notice, payments into a central fund, etc.

Employees who were made redundant have the right to severance pay if the employee continuously worked for the employer for more than two years (minimum severance threshold). The severance payments must be made before the end date of the employment agreement.

13. If employees are entitled to redundancy/severance payments, are there eligibility criteria and how is the payment calculated? If this is formula based, please set out the formula.

The amount of severance pay is determined using the length of the previous continuous employment relationship with that employer and cannot be set at an amount lower than one-third of the average monthly salary from the three months preceding the contract termination for each full year the employee worked for that employer.

14. Do employers need to notify local/regional/national government and/or regulators before making redundancies? If so, by when and what information needs to be provided?

They must notify the Employment Service if there are collective redundancies.

15. Is there any obligation on employers to consider alternatives to redundancy, including suitable alternative employment?

There is no such obligation on the employer.

16. Do employers need to notify local/regional/national government and/or regulators after making redundancies, eg, immigration department, labour department, pension authority, inland revenue, social security department? If so, by when and what information needs to be provided?

The employer must inform the Croatian Pension Insurance Institute no later than 24 hours after the termination of the employment relationship that the labour agreement has been terminated and deregister the employee from pension and health insurance no later than eight days from the date of termination.

17. If an employee is not satisfied with the decision to make them redundant, do they have any potential claims against the employer? If so, what are they and in what forum should they be brought, eg, tribunal, arbitration, court? Could a union or employee representative bring a claim on behalf of an employee/employees and if so, what claim/s and where should they be brought?

Employees may file a wrongful termination claim seeking compensation and reinstatement with the municipal court.

The workers' council can take legal action within its powers and obligations. If the employer fails to conduct the redundancy procedure under the law, the workers' council is authorised to act as a party in the court proceedings.

18. Is it common to use settlement agreements when making employees redundant?

Settlement agreements are a common way of terminating employment agreements, especially for redundancy.

19. In your experience, how long does it normally take to complete an individual or collective redundancy process?

An individual redundancy process without settlement may take up to two months, under the condition that no litigation is initiated before the court.

Collective redundancy depends on the duration of the consultation with the workers' council (ie, 30-60 days, plus an additional two-month period if no settlement is reached and provided no litigation is initiated).

20. Are there any limitations on operating a business for a period following a redundancy, like a prohibition on hiring or priority for re-hire being given to previous employees?

The employer is not allowed to employ a new employee in the same position for six months from the date of delivery of the redundancy decision to the employee, during which time the dismissed employee has priority if there is a need to populate the same work position again.

Restructuring/Re-organisation of the business

21. Is employee consultation or consent required for major transactions (such as business transfer, mergers, acquisitions, disposals or joint ventures)?

The employer must inform the workers' council and all employees involved in the transfer in writing of the possible business transfer, merger, acquisition, disposal, joint venture or any kind of transition to a new employer before the date of the transfer.

22. What are the remedies that are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Employees do not have the right to prevent the transfer of their employment agreements to the new employer. The Act provides that the employee retains all the rights that arise from the employment agreement concluded with the former employer and that these rights will be enforced by the courts if the new employer violates them, following a lawsuit from the employee.

23. Is there any statutory protection of employees on a business transfer? Are employees automatically transferred with the business? Are employees protected against dismissal (before or after the transfer of employment)?

Employees are automatically transferred with the business transfer. Their legal status remains unchanged. Hence, their employment contracts can be terminated under the same terms and conditions as they were before the transfer.

24. What is the procedure for a transfer of employment (upon a business transfer or within group companies)?

The employer must inform the workers' council and all employees of a transition to a new employer before the date of the transfer.
This notification must contain the following information:

- the date of transfer of the employment contract;
- the reasons for the transfer of the employment contract;
- the effects of the transfer of the employment contract on the legal, economic or social situation of the employee; and
- the measures envisaged for the employees whose contracts are transferred.

The employer must also inform the new employer, completely and truthfully, in writing about the rights of the employees whose employment contracts are being transferred. If the employer fails to notify the new employer properly, this will not affect the rights employees have according to their previous employment.

The employment agreements are deemed to be transferred to the new employer on the day the legal effects of the transfer occur.

25. Are there any statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment?

There are no statutory rules on harmonising the transferring employees' terms of employment with the existing employees' terms of employment.

Changing Terms and Conditions

26. Can an employer reduce the hours, pay and/or benefits of an employee?

Yes, if both parties accept such a change and sign an amendment to the employment agreement.

The general rules of contract law apply to employment agreements, so neither contracting party may change the conditions of the agreement unilaterally. Both the conclusion of an employment contract and its amendment require the consent of both contracting parties and must be made in writing.

27. Can an employer rely on an express contractual provision to vary an employment term?

No. Such an express contractual provision that would allow the employer to modify the employment agreement terms unilaterally would be considered void according to Croatian employment law and the case law of the courts. It is only possible to change the terms of the employment agreement with the consent of both parties.

28. Can an employment term be varied by implied conduct?

Yes, but only if it is preferable for an employee (eg, a salary increase).

29. If agreement is required to vary an employment term, what are the company's options if employees refuse to agree to the proposed change?

This is possible only by offering the employee the chance to sign an amendment to the employment agreement. If the employee does not agree and refuses to sign the changed agreement, the valid employment agreement remains in force.

The company may terminate the agreement and at the same time offer to sign the amended agreement. If the employee refuses to sign the amended agreement, the employment termination procedure is activated.

30. What are the potential legal consequences if an employer varies an employment term unilaterally?

The employer will continue to have the same rights as if the change never occurred and they may enforce them via court proceedings unless the change is preferable to the employee.

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Vedran Kopilović is a managing associate of the firm, with a significant part of his practice devoted to employment matters. Vedran has extensive experience in providing advice on various employment-related matters, mostly in relation to day-to-day matters, employee remuneration schemes, compliance, internal reporting procedures, dismissals and collective redundancies. Vedran also has in-depth knowledge of work organisation, which makes him a go-to lawyer for reorganising clients' work processes.

Vedran assisted in establishing and structuring the national association of employers in Croatia - Croatian Employers' Union, association encompassing several sectoral employers' associations with pretension to become the largest association on the employers in Croatia.

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