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Guide to Restructuring a Cross-Border Workforce

Hungary

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Hungary

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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 Hungarian Labour Code defines "reasons related to the employer's operation" as a legitimate reason to unilaterally terminate employment relationships with notice. As a result, several clearly distinguishable groups of causes have been established, namely:

- restructuring (eg, terminating positions, closing down part of the employer's enterprise);
- redundancies (reducing the number of employees with the same position); and
- quality change (replacement of an employee to improve the quality of work).

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

There is no legal guidance or requirements in terms of a pre-selection procedure when terminations do not trigger the application of mass lay-off rules. The employer can freely decide which employment relationships will be terminated; however, the principle of equal treatment must be followed. After selecting employees, the next step is serving the termination notices. Termination notices can be served in person, via registered post and, if certain formal requirements are met, electronically. A termination notice becomes effective upon being served to the employee and it may be withdrawn only with the employee's consent. The termination notice shall also be considered served if the employee concerned refuses to receive it or intentionally prevents delivery.

The termination notice must contain the reason for termination (ie, reference to restructuring, redundancy, etc). However, the expediency and economic rationale of the given reason do not have to be explained or proven, neither in the termination notice nor in any eventual legal dispute. There is also no need to explain why that particular employee's employment relationship has been chosen to be terminated, unless the employee refers to a violation of the principle of equal treatment.

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

Yes, it does.

Collective redundancy rules are triggered when the following number of employees are made redundant within 30 days:

- 10 or more employees in undertakings with 20-99 employees;
- at least 10% of the employees in undertakings with 100-299 employees; or
- 30 or more employees in undertakings with 300 or more employees.

The key steps for completing mass redundancies are the following:

- the employer informs the works council (if present) of the planned lay-off and starts consultations within seven days. Simultaneously, the employer should notify the government employment agency;
- the employer should consult with the works council until an agreement is reached or for 15 days;
- the employer should inform the government employment agency and the affected employees of its final decision at least 30 days before serving the termination notices; and
- the employer should serve the termination notices no earlier than 30 days after that notification. The actual date of termination depends on the notice period that applies to the respective employee.

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?

Employers must inform the works council of the planned collective redundancy and start consultations within seven days. The notification must cover:

- the reasons for the planned collective redundancy;
- the number of employees to be dismissed, broken down by categories, or the headcount during the period to be considered from a collective redundancy perspective;
- the period during which the planned collective redundancy is to be implemented, and the timetable for its implementation;
- the criteria proposed for the selection of the employees to be dismissed; and
- the conditions for and the extent of benefits provided in connection with the termination of employment relationships, other than what is prescribed in employment regulations.

If a restructuring scenario does not trigger collective redundancy rules, employers must still consult the works council at least 15 days before deciding any restructuring plans affecting a large number of employees.

Trade unions should only be involved if they request to be involved, or the collective bargaining agreement specifically provides for their involvement.

Employers do not have to reach an agreement as a result of the consultation with the works council or the trade union.

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

Employers do not have to reach an agreement as a result of the consultation with the works council or the trade union (ie, failure to reach an agreement cannot delay or prevent the restructuring).

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 employer, if planning a collective redundancy, must initiate consultations with the works council. At least seven days before the consultation, the employer should inform the works council in writing about certain matters (see question 4). The employer's obligation to consult with the works council applies until the conclusion of an agreement or, failing this, for 15 days after the beginning of the consultation.

A failure to consult with the trade union or works council does not invalidate any decision taken by the employer. Employees cannot claim that the decision concerned was

unlawful due to the employer's failure to consult with the trade union or works council. If the employer fails to initiate a mandatory consultation, trade unions or the works council may start a lawsuit to establish a violation, but cannot ask for the measure or decision made by the employer in violation of the applicable rules to be rescinded.

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?

Employers have to present the reasons for the collective redundancies to the works council, but the works council cannot challenge such reasons in a way that would affect the collective redundancy process.

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)?

Employers are not required to consult with the employees concerned individually, but have to notify them in writing of the decision on collective redundancy 30 days before serving the termination notices. Failing to provide such a notification automatically renders the termination of the employment relationship unlawful.

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

No, there are no such rules. Employers can freely decide whose employment relationship will be terminated; however, the principle of equal treatment must be observed.

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

The groups that are protected from termination include employees who are pregnant, on maternity, paternity or parental leave or unpaid leave to take care of a child, on carer's leave, undergoing treatment for human reproduction, and those doing voluntary army service. These employees may only be dismissed by a mutual termination agreement.

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

A termination notice can be served, but will only take effect once the relevant circumstances no longer exist for employees on sick leave, employees nursing their sick child, and employees on unpaid leave for nursing or caring for a close relative at home. The employment relationship of such employees can be terminated by mutual agreement at any date.

The president of the works council, work safety representatives, and designated trade union representatives can only be terminated by notice with the prior consent of the relevant employee representative body. To terminate this category of employees through a mutual termination agreement, the consent of the relevant representative body is not required.

In addition to the above, the employment relationship of an employee who will be eligible for retirement within five years and the employment relationship of a mother or a single father who did not take maternity leave, until the child reaches the age of three can only be terminated if there is no vacant position available for the affected employee that is suitable in terms of skills, education, experience required for their previous job, or if the employee refuses an offer made for that job.

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.

For a redundancy, employees are entitled to a notice period, which is the period between the employee receiving their notice of termination and the actual termination itself. The employee and the employer are free to specify the length of notice in the employment agreement, or the collective bargaining agreement can specify, but there must be a legal minimum of 30 days, which increases depending on the number of years spent with the same employer company (from five additional days for three years spent at the employer up to an additional 90 days for 20 years' service).

During the notice period, employees must be relieved from work for (at least) half of the notice period, but are still entitled to their salary for the full notice period.

In addition to salary for the notice period, employees may be entitled to a severance payment.

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.

A severance payment is due if the employee has worked at least three years for the employer. The amount of severance payment, unless provided otherwise in the employment contract or the collective bargaining agreement, is based on the number of years spent by an employee with the company, as follows:

- three years – one month's salary;
- five years – two months' salary;
- ten years – three months' salary;
- 15 years – four months' salary;
- 20 years – five months' salary; and
- 25 years – six months' salary.

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?

Only for a collective redundancy. Employers must notify the government employment agency of their intention to carry out collective redundancy by providing the same information as to the works council (please see question 4).

Employers must also notify the government employment agency of their final decision at least 30 days before serving the termination notices.

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

Only for employees who are eligible for retirement within five years and the employment relationship of a mother or a single father who did not take maternity leave before the child turns three. Such employees' employment relationship can only be terminated if there is no position available at the workplace for the affected employee that is suitable in terms of skills, education, and experience required, or if the employee refuses the offer made for their employment in that job.

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?

Employers must notify the Hungarian Tax Authority of the termination of the employment relationship of an employee for

social security reasons. Information to be provided covers the employee's personal data, information about the employment relationship (eg,, start and end date, salary, job title, weekly working hours), information on private pension funds and the method of termination.

If an employee holds a residence permit, the Hungarian Immigration Authority must also be informed of the termination of the employment relationship.

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?

For unilateral termination notices, the reasoning is of the utmost importance regarding lawfulness. The reasons provided must meet the requirements of authenticity; clarity; and causality. If the employee challenges the reasons provided by the employer, the burden of proof lies with the employer to prove that the facts described in the reasoning of the termination notice meet the above requirements.

For redundancies, the expediency and economic rationale of the given business reason do not have to be explained or proven, either in the termination notice or in any eventual legal dispute. There is also no need to explain why a specific employee's employment relationship has been chosen to be terminated.

In the event of unfair dismissal:

- the employer is liable for compensation for damages resulting from the unfair dismissal. Compensation for loss of income from employment payable to the employee may not exceed 12 months' salary (ie, employees might receive their wages from the date of the unfair dismissal for up to 12 months); and
- in addition to compensation for damages, employees may also claim an unpaid severance payment.

Employees may only be reinstated if:

- the termination of the employment relationship violated the principle of equal treatment;
- the employee was protected by a prohibition of dismissal (see question 10);
- the employee was a trade union representative at the time of termination and the trade union did not give its consent to the employer to terminate the employment relationship;
- the employee was an employee representative at the time of termination;
- the employee has successfully challenged the termination of the employment relationship by mutual agreement or his or her declaration to that effect; or
- the termination violated the prohibition on the abuse of rights.

Employees may only bring their claims to court; no arbitration is possible for employment law-related claims.

Trade unions are entitled to provide legal representation to their members (ie, they can bring claims to court against the employer on behalf of members).

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

Yes. Entering into a mutual termination is the most flexible method of termination. In these cases, all terms and conditions of termination – including the date of termination and compensation – are freely negotiated and agreed to by the parties. This method may be the only solution for certain protected classes of employees and may be the preferred solution for employees whose termination could entail legal risks. A mutual termination agreement may contain a waiver regarding any claims the employee may have against the employer related to the employment relationship and the termination thereof.

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

As an individual redundancy process does not require any prior consultation or notification process, the only time factor to be considered is the notice period of the employee (see question 12).

For collective redundancies, if a works council operates at the employer, the process takes at least 52 days (not including notice periods) due to obligations of prior consultation and notification. In the absence of a works council, it takes approximately 31 days (not including notice periods).

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?

There are no specific legal provisions to this effect.

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)?

If major transactions affect a large number of employees, employers must initiate consultation with the works council (if one exists). Employers are not required to initiate consultation with trade unions; however, if trade unions request it, employers must consult with them.

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?

Failure to consult with a trade union or works council does not invalidate any decision taken by the employer (for further details on the consequences of non-compliance with consultation duties, please see question 6).

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)?

The Hungarian Labour Code, under Council Directive 2001/23/EC, provides that if there is a transfer of economic units (ie, an organized grouping of material and immaterial resources), the rights and obligations arising from employment relationships are transferred from the transferor to the transferee under the law. This rule only applies if the economic unit being transferred retains its identity, meaning an organised grouping of resources that has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

Employees are protected against dismissal to the extent that the transfer itself cannot serve as a valid reason for dismissal.

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

The procedure covers the following main steps:

- informing the works council (at least 15 days in advance):
  - the transferring and receiving employers will inform the works council or, in the absence thereof, the relevant employees) of the planned transfer date; the reason for the transfer; the legal, economic and social consequences of the transfer; and
  - if there is no works council, the relevant employees must be given the same information, and also be advised on any measures planned concerning the employees;
- consultation with the works council (at least 15 days in advance);
  - if there is a works council, the transferring and receiving employers should start a consultation process including any measures planned concerning the employees and options for avoiding any negative consequences;
- information that should be provided to the receiving employer:
  - the transferring employer should provide the receiving employer with information regarding the employment relationships affected by the transfer and the rights and obligations arising from non-competition agreements and study contracts (if any); and
- Informing employees (within 15 days post-closing):
  - the receiving employer should inform the relevant employees about the receiving employer's data; changes in working conditions (eg, daily working time; wages above the base wage and other benefits); payroll accounting; the frequency of payment of wages; whether a collective agreement applies to the employer; etc.

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

No specific provisions apply, but the general principle of equal pay for equal work as well as the equal treatment principle must be observed.

Changing Terms and Conditions

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

Working hours, pay and any other terms included in the employment agreement can only be changed by mutual agreement. This is also true for benefits, if it is included and guaranteed in the employment agreement. However, benefits provided by the employer that are not guaranteed in the employment agreement can, subject to certain exemptions, be reduced if the employer expressly stipulates the right to reduce or withdraw such benefits.

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

Generally, no.

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

Employment terms laid down in a written agreement cannot be varied by implied conduct; whereas unregulated terms can be varied by implied conduct as long as such conduct is mutual.

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?

Generally, there are no such options. Any adverse action would most likely constitute retaliation or an abuse of rights.

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

If an employer unilaterally varies an employment term over the employee's objection, the employee may be entitled to terminate their employment relationship with immediate effect. In such a case, the same amount is due as would be payable if the employer terminated the employment by (regular) notice. More specifically, severance payments and salaries for the period during which the employee would have been exempt from the obligation to work (the so-called exemption period) are payable in such cases.

Employees might also be entitled to bring their claim arising from the modification of an employment term to court.

Areas to Watch

Please provide an outline of any upcoming legislative developments or other issues of particular concern or importance that are not already covered in your answers to the questionnaire. Please limit responses to the jurisdictional level rather than descriptions of wider global trends. Please limit your response to around 200 words.

Not applicable.

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