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Guide to Restructuring a Cross-Border Workforce

Romania

Contributor:

KINSTELLAR

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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?

Yes – according to the Romanian Labour Code, the redundancy process (or elimination of the position) is a dismissal due to reasons not attributable to the employee caused by the cancellation of the role for objective reasons, provided that the role cancellation is effective (must be deleted from the organisational chart) and has a real (is based on real operational or economic arguments) and serious (is not a disguised termination of employment based on subjective reasons) origin. In other words, the functionality of the position is no longer useful in the internal organisation of the employer (eg, economic reasons, restructuring of the business, or externalisation).

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

The process starts by drawing up a reorganisation plan, which comprises the business rationale that justifies the need to eliminate the positions or positions. In other words, the document must be a comprehensive plan detailing the need to reorganise the activity as well as the implementation of the envisaged measures.

There should also be a selection procedure and a rationale as to why a post is preferred to a reduction in staff for similar positions.

Once it has been drawn up, the business plan must be approved by the relevant corporate body (usually the shareholders – the up-to-date Articles of Incorporation must be analysed to establish the competent body). Consequently, a decision or resolution from the Romanian legal entity or competent corporate body regarding the cancellation of the positions and the approval of a new organisation chart must be prepared as the next step.

Based on this approval, the employer's director or administrator, as the legal representative, issues a decision implementing the approval and notifies the employee about the cancellation of his or her position.

After the notice period lapses (usually 20 working days), the employer issues the final document, which is the dismissal decision.

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 – under the Labour Code provisions, collective dismissal is dismissal within 30 calendar days, due to reasons independent of the employee, of:

- at least 10 employees, if the employer has between 20 and 100 employees;
- at least 10% of employees, if the employer has between 100 and 300 employees; and
- at least 30 employees, if the employer has at least 300 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?

For the regular redundancy process, there is no obligation to consult with unions or employee representatives. However, it is advisable to inform them about the reorganisation. Nevertheless, before the commencement of a collective dismissal, the employer must initiate consultations with employee representatives or trade unions, as the case may be, concerning matters such as social measures for the professional requalification of the dismissed employees.

The law provides for mandatory negotiations, meaning that the employer must provide representatives with relevant information that will be subsequently communicated to the local labour inspectorate.

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

There is no obligation to reach an agreement. Only the necessary steps regarding notification, information and consultation with the representatives or union must be observed. If the legal provisions regarding the notification, information and consultation process are not complied with, the employer's actions are unlawful and can be annulled by the courts. Additionally, the public authorities are also entitled to extend the collective dismissal procedure, at the request of any of the social partners and due to objective reasons.

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?

Once the reorganisation is approved by the competent corporate body, the employer must notify the representatives or the union concerning the intention to reorganise. There is specific information that needs to be provided by the employer. At the same time, the labour authorities must also be notified about starting the notification, information and consultation process. Within 10 days, the representatives or union must provide their point of view and potential specific measures to be taken for the redundancy to be avoided. The employer must respond within five days. If the intention is still to proceed with redundancy, the employer must notify the representative or union and labour authorities. Notifying the public authorities must commence at least 30 calendar days before the issuance of individual dismissal decisions.

The duration of the collective dismissal process depends on the duration of the consultations between the social partners, as well as the mandatory terms to be observed during the collective dismissal procedure, as provided by the Labour Code or by the applicable collective bargaining agreements. According to the Labour Code, the collective dismissal procedure takes at least 45 calendar days.

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?

During the negotiations between the employee's

representatives or trade unions and the employer, the latter will provide economic or operational reasons for their actions. The relevant employees can challenge the dismissal decision within 45 days and request its annulment, claiming that the redundancy measure is, in fact, a wrongful dismissal.

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)?

Negotiations and discussions are conducted with employee representatives or trade unions. Usually, if there are no such bodies of employees, the employees are not individually consulted.

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

The positions to be made redundant will be established, and the employees are then selected according to the results of the appraisal. If, after these professional criteria have been applied, several employees are in similar circumstances, the social criteria laid down in special laws or collective labour agreements will apply. Such criteria may include:

- if both spouses work in the same establishment, the dismissal of the spouse with the lower salary;
- priority for employees without children as carers; and
- protecting the posts of carers, sole earners or individuals who have no more than three years left before reaching retirement age, etc.

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

According to labour law, the dismissal of employees cannot occur:

- during a period of temporary incapacity for work, established by a medical certificate;
- during a suspension of work due to quarantine;
- for reasons related to pregnancy, once the pregnancy is made known to the employer, in writing;
- during maternity leave;
- during childcare leave for children up to the age of two or, in the case of a disabled child, up to the age of three;
- during leave to care for a sick child up to the age of seven or, in the case of a disabled child, for a concurrent illness up to the age of 18;
- during rest leave; or
- during parental leave or carers' leave, or during absence from work in unforeseen circumstances caused by a family emergency due to illness or an accident (which may not exceed 10 working days in any calendar year).

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

Please see question 10.

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 may benefit from severance pay if their position is cancelled or there are collective dismissals. Severance payments may be regulated by collective bargaining contracts, concluded on different levels (eg, activity sectors, or at a company level). In practice, these have also been provided in the employer's internal regulations. There is no mandatory minimum level of severance pay; it can be freely negotiated and established by the social partners (ie, the employer, the employees' representatives or the trade union).

The minimum notice term for a collective dismissal is 20 working days. Additionally, dismissed employees may benefit from unemployment indemnities that are paid from the state budget.

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.

There is no legal minimum provided by the law on severance packages, and is there no legal obligation to pay them.

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?

The relevant public authorities take part in the collective dismissal procedure, as they are notified concerning the steps of the procedure and the results of consultations between the social partners (ie, the employer and the employees' representatives or trade union). The public authorities are also entitled to prolong or shorten the collective dismissal procedure, upon the request of any of the social partners and for objective reasons. Information provided to the authorities include the total number and categories of employees; the reasons for the planned redundancies; the number and categories of employees who will be affected by the redundancies; the criteria to be considered for determining the order of priority for redundancies; the measures envisaged to limit the number of redundancies; measures to mitigate the consequences of the redundancies and compensation to be granted to the redundant employees, according to the legal provisions or the applicable collective labour agreement; the date from which or the period during which the redundancies will take place; and the deadline for the trade union or, where appropriate, the employees' representatives to make proposals to avoid or reduce the number of redundancies.

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

During the negotiations between employee representatives or trade unions and employers, they should discuss: how to avoid collective redundancies or reduce the number of employees to be made redundant; or mitigating the consequences of redundancies through the use of social measures aimed, inter alia, at supporting the retraining of redundant employees.

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?

As already stated, the authorities are notified before and during the collective redundancies about all the procedures, and may delay this process for justified reasons. In addition, employers also must notify the local workforce agency about the redundancies, to find ways to help employees find other jobs.

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 can file a claim against the employer stating that the redundancy measure is a wrongful dismissal and may request reinstatement as well as retroactive payment of all salary rights as of the date of dismissal. Moreover, the employee also has the right to claim for proven damages. Additionally, the claim must be filed to the tribunal from the employees' address or place of work. The decision of the tribunal can be challenged to the Court of Appeal, which will give a final decision on the merits. Only union bodies may file a claim and represent the employees (members of the union) in front of the competent court.

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

Yes, concluding mutual settlement agreements are quite common in this scenario.

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

The individual process takes about a minimum of 30 calendar days, while the collective one takes at least 45 calendar days.

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?

Within 45 days. For individual dismissal procedures, there is no limitation.

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)?

According to Romanian labour legislation, the trade union or employee's representatives are involved in almost all the steps concerning mass lay-offs, or whenever actions or measures which may affect the work conditions and the welfare of the employees are expected to be taken. Employers are required to inform and consult with trade unions or employees' representatives, on:

- recent and probable developments in the undertaking's activities and economic situation;
- the situation, structure and probable development of employment within the undertaking and any anticipatory measures expected, in particular where there is a threat to jobs;
- decisions likely to lead to significant changes in the work organisation, contractual relations or employment relationships, including those covered by Romanian legislation on specific information and consultation procedures for collective redundancies and the protection of employees' rights in the event of a transfer of the undertaking.

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?

A failure to comply with the legal provisions on informing employees is punishable with a fine. This does not exclude employees from taking legal action – if they consider themselves affected by the decision concerning them – and requesting damages.

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 rights and obligations arising from the individual employment agreements of the employees affected by the transfer will be automatically taken over by the transferee employer from the date of the transfer of the activity.

The transfer of the undertaking may not constitute grounds for dismissal of the employees affected by the transfer. However, dismissals that may occur for economic, technical or organisational reasons, involving changes in employment, are not prohibited.

If the employment contract is terminated because the transfer involves a substantial change in working conditions to the detriment of the employee, the employer is liable for the termination of the employment agreement.

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

The transferor must notify the transferee before the transfer date of all the rights and obligations to be transferred. At least 30 days before the transfer date, the transferor and the transferee must notify the employees' representatives in writing. If this is not possible, they must notify their own employees of specific information.

Irrespective of the number of employees, should the transferor or the transferee envisage measures in connection with their employees concerning the transfer, it must consult with the employees' representatives at least 30 days before the transfer date. The transferred employee's approval is not required, as he or she has no right to refuse the transfer as the transfer of employees will occur by law on the date when the undertaking itself is transferred (as stated above, except when the transfer involves a significant change in their working conditions).

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

No such rules are provided for in the local legislation. The employees are transferred per se, according to the existing conditions or benefits at the moment of transfer.

Changing Terms and Conditions

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

The hours and pay can only be amended by concluding an addendum to the individual employment agreement, which shall be signed by both parties. As regards the benefits, in Romania, there is no mandatory obligation to grant benefits to employees in addition to the requirements for the local employer to calculate, withhold, and pay salary tax and

compulsory social security contributions. However, if such benefits are regulated by the employment agreement, they cannot be reduced or removed without the employee's consent, whereas as long as they are laid down by the employer's policies, procedures or internal regulations, the employer is free to handle them as desired.

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

As a rule, the employment agreement can only be amended by mutual agreement of the parties, with such amendments covering the duration of the contract, place of work, type of work, working conditions, salary or working time and rest time. However, certain aspects may be unilaterally decided by the employer (eg, the place of work may be unilaterally changed by the employer by delegating or seconding the employee to a place of work other than that provided for in the employment agreement or may temporarily change the place and manner of work, without the employee's consent and, in cases of force majeure, as a disciplinary measure or as a protective measure for the employee, subject to the legal provisions)

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

No, as per question 27, the mutual agreement of the parties is required.

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?

Apart from the limited circumstances in which the employment agreement can be unilaterally amended by the employer (stated above), the employer has no other mechanisms available other than reaching an agreement with the relevant employee for the sought changes (naturally, aside from the dismissal options if, according to business needs, the position is made redundant).

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

Unilateral amendment of the terms of the employment agreement (apart from the above exceptions) is unlawful and can be challenged by the employees in court, who may request that the situation be corrected and, if appropriate, damages.

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.

It is envisaged that starting on 1 October 2023, the minimum monthly national gross salary will increase from 3,000 lei to 3,300lei (approximately from EUR 600 to EUR 660).

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Remus Codreanu is a Partner in Bucharest office, coordinator of the local Employment & Labour Law area, as well as the head of the Dispute Resolution (including White-Collar Crime) service line. Remus has almost 20 years of broad and in-depth experience in advising and representing Romanian and international companies (acting in various industries like construction, energy, IT, retail, media etc.) on a broad range of employment law matters involving both consultancy (e.g. out-of-court settlement of employment cases, implementation of TUPE in outsourcing contracts, implementing individual or collective dismissal procedures, providing regular employment advice in the day-to-day related activity of the clients, etc.) and contentious matters (representing employers in court cases having as object the challenging of the dismissal decisions, damages for alleged harassment, discrimination etc.). Despite the high percentage of trials won by employees in Romania generally, Remus and the team managed to win the vast majority of such court cases acting on behalf of employers.

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Cătălin Roman
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Cătălin Roman is a Senior Associate in Kinstellar's Bucharest office. He is one of the co-heads of the local employment practice and also a co-head of the practice at regional level.

Cătălin is a veteran in providing employment support to multinationals in Romania: advising on all aspects of labour-related matters including hiring, dismissals, internal policies and compliance, as well as disputes. He is a regular contributor to various international and local publications and often serves as speaker in specialised conferences. His practice likewise covers dispute resolution matters, having assisted and represented clients in front of Romanian courts of law in a wide range of employment matters (as well as civil and administrative). Cătălin's expertise also covers having been the coordinator of the employment practice at the local office of a leading German law firm.

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