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Guide to Restructuring a Cross-Border Workforce

Serbia

Contributor:

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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, the Labour Act defines redundancy as and for the need to perform a specific job, or a reduced workload, both caused by technological, economic, or organisational changes.

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

The first step is for the employer to adopt a resolution providing the reasons for redundancy to amend the Rulebook on Internal Organization and Systematization of Job Positions[1], and to display these documents on the company's bulletin board at its premises for eight days, after which it will enter into force. Once this period ends, the employer will pay statutory severance to the redundant employee and consequently issue an individual decision on termination of employment.

[1] Rulebook on the Internal Organization and Systematization of Job Positions is a set of the general bylaws that sets out all the job positions within the employer, and must be amended if certain job positions are terminated due to redundancy.

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

For a collective redundancy, the employer will adopt a redundancy programme if it declares the following number of employees redundant within 30 days:

- 10 employees if it has between 20 and 100 employees on an indefinite employment contract;
- 10% of employees if it has between 100 and 300 employees on an indefinite employment contract; and
- 30 employees if it has more than 300 employees on an indefinite employment contract.

Also, the employer will adopt a redundancy programme if it plans to declare at least 20 employees redundant within 90 days, regardless of the total number of 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 employer conducts a collective redundancy, there is an obligation to consult with and submit the redundancy programme draft to the representative trade union organised within the employer.

The trade union can provide their opinion on the programme, which is not binding for the employer.

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

No, the redundancy procedure is not conditional upon reaching an agreement with the trade union.

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 must deliver the draft redundancy programme to the trade union within eight days of its finalisation and the trade union has 15 days to respond to the programme. However, the employer is not required to accept but only to consider the trade union's opinion of the programme.

If the employer fails to comply with rules governing collective redundancy, the employee can challenge the decision on termination before a labour court or before arbitration. Also, the Labor Inspectorate may impose a monetary fine on the employer for failure to adopt the redundancy programme.

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?

Yes, the draft redundancy programme submitted to the trade union must include justified reasons for redundancy (which are business-related), objective criteria for determining the employees who will be declared redundant, and measures for keeping redundant employees employed, such as a transfer to other vacant positions or places of work, decreasing working hours, and transfer to other employers.

The business rationale can only be challenged in a labour dispute initiated by an employee's claim for nullification of the decision on termination (see question 16).

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)?

No, the employer is not required to consult with employees individually.

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

The Labour Act does not provide specific selection criteria, but stipulates that conditions for declaring someone redundant cannot be based on the employee's absence from work due to sick leave, pregnancy leave, maternity leave, or special childcare leave.

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

The employer is prohibited from terminating the employment (also including making them redundant) of a pregnant employee or an employee on pregnancy, maternity, or special childcare leave.

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

In general, the employees' representative and trade union members could be considered a protected category, since employers are prohibited from terminating their employment based on their status or participation in trade union activities.

The burden of proof that the termination of employment is not a result of the status or activities of such an employee is on the employer.

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.

Before implementing an individual decision on termination, the employer must pay statutory severance to the redundant employee. Also, the employer must pay all other employment-related outstanding compensation (salary, compensation for unused annual leave, etc) within 30 calendar days following the termination date.

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.

Each redundant employee is entitled to statutory severance pay, which cannot be lower than one-third of the employee's monthly average salary for each full year of employment with the employer or its related entities. The base for the calculation is the average salary paid to the employee for the last three months preceding the month in which severance is paid.

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?

For a collective redundancy, the employer will inform the state regulatory body – the National Employment Agency – and provide them with the redundancy programme draft within eight days after its finalisation. Then, within the 15 days following the receipt of the programme, the National Employment Agency will deliver to the employer its proposal for measures to keep the redundant employees employed, such as decreasing working hours, and transferring an employee to another suitable employment.

Once the employer receives the proposal from the National Employment Agency, it will consider the measures and notify the agency of its opinion within eight days. Still, the employer is not required by the agency to apply the proposed measures.

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

See question 14.

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?

Upon completing the redundancy procedure, the employer must deregister redundant employees from the state social security register – the Central Register of Social Security Insurance. This should be done by applying to the online platform of the Central Register of Social Security Insurance within three business days of the employment termination date.

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?

The redundant employee is entitled to initiate a labour dispute, claiming they were unlawfully dismissed and seeking reinstatement to the workplace and compensation for lost salaries, including payment of corresponding taxes and social security contributions. The trade union representative could file the claim on behalf of the redundant employee.

In such a labour dispute, the court has to determine whether the redundancy procedure was conducted in line with the Labour Act; and the reasons for redundancy were objective and justified.

The deadline to initiate court proceedings is 60 days from the employment termination date.

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

No. Settlement agreements can be used to avoid the collective redundancy procedure by concluding a mutual termination agreement with the employee.

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

Usually, the whole individual redundancy process lasts up to 30 days, while the collective redundancy procedure usually takes around two months.

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?

Yes, the employer is prohibited from hiring a new employee for the redundant position for three months following the employment termination date. If there is a need to perform the work of a redundant job before this period expires, the redundant employee has the priority in being rehired.

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)?

For selling a business or a change of company status, an employee's consent is not required. However, the employer has certain information and consultation obligations towards the trade unions or employees (if there is no existing trade union at the employer).

A failure to fulfil these obligations does not make the business sale ineffective.

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?

No specific remedies are available to employees if the employer does not comply with consultation obligations. However, an employer that denies its employees their rights concerning the business sale may be fined between approximately EUR 5,100 and EUR 12,700 by the Labour Inspectorate.

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 current employer and the new employer must inform employees of the assignment of their employment agreements. If an employee refuses to be transferred or fails to respond to the notice of transfer within five days, their employment may be terminated.

Employee's rights and obligations provided under the current employer's bylaws (ie, a collective bargaining agreement (CBA) or Employment Rulebook that exists on the transfer date) must be transferred to the new employer. The new employer is prohibited from amending such terms until the end of the first year following the sale of a business, the date of expiration of the relevant bylaw (CBA) or the conclusion of the new CBA.

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

See question 23.

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

No – see question 23.

Changing Terms and Conditions

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

Yes. However, the terms provided under an individual employment contract can only be changed through the conclusion of an annexe to the agreement under the procedure set out in the Labour Act.

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

No, a variation clause is not enforceable under the Labour Act.

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

No – except when the employee remains working for the employer for at least five working days after the end of the fixed-term employment contract, in which case it will be deemed that the employee has established indefinite employment.

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?

The employer can only amend terms stipulated under the employment contract through the procedure of annexing, in line with the rules outlined in the Labour Act.

If the employee rejects the annexe reflecting proposed changes, the employer may terminate their employment only if the amendments are related to the following: transfer to another suitable job position; change of the place of work; transfer to another employer; applying measures for keeping the redundant employees employed; or change of salary and other compensation arising from the employment.

In other cases, if the employee refuses the amendments, the employer cannot terminate their employment, and such unilateral amendments will not be binding on the employee.

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

The employee can challenge such a decision before the labour court within 60 days of its enactment.

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Kristina manages a team of several experienced lawyers and regularly provides legal advice in relation to employment agreements, remuneration schemes, executive compensation, dismissals, secondment arrangements and expatriation of employees, board appointments, employee outsourcing, severance, and retention plans.
She has significant experience advising major international and domestic companies and institutions on various employment matters, including whistleblowing and mobbing procedures, collective bargaining, trade union issues, strikes, codes of conduct, global reductions in force and cost-saving initiatives, restructuring, and complex redundancy procedures.
Kristina also represents clients before courts of all instances in high-profile labor cases, including unlawful termination, mobbing, and discrimination claims.

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