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Guide to Restructuring a Cross-Border Workforce

Slovakia

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. Employers may dismiss employees on statutory grounds of redundancy, which include a change in roles, a change in technical equipment, a reduction in the number of employees to ensure work efficiency, or other organisational changes.

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

The following steps need to be observed (in the given order):

- the employer must first adopt a written resolution describing the particular job positions being cancelled and the reasons for that;
- the employer must offer employees who will be dismissed another suitable vacant job position;
- the employer must consult the dismissals with the employee's representatives (if they exist at the employer);
- the employer must serve a termination notice, which sets out in writing the reason for dismissal;
- after the expiration of the notice period, affected employees are entitled to severance payment depending on the time worked for the employer; and
- the employer must not hire new employees for the positions that were made redundant within two months of the dismissals.

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. Within a collective redundancy regime, different consultation obligations and additional information obligations apply (both explained further below). Collective redundancy is triggered when the following number of employees are made redundant within any rolling period of 30 days:

- at least ten employees in undertakings with 21 to 99 employees;
- at least 10% of the total headcount in undertakings with 100 to 299 employees; or
- at least 30 employees in undertakings with 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?

Yes, a consultation obligation applies (explained further below). An agreement does not need to be reached at the end of the consultation.

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

No. Failing to reach an agreement does not have the effect of delaying or preventing dismissals.

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?

There are no prescribed procedural rules for consultation. In general, consultation must be transparent, carried out to eventually reach a consensus, and should be appropriate (in terms of time and contents) to the matter being consulted.

Individual redundancy
Before serving termination notices, the employer must send a written invitation for consultation to employees' representatives. Consultation must take place within seven business days of delivery of the invitation. If consultation does not take place by the given deadline for reasons outside the employer's control, the matter is deemed to be consulted and the employer may proceed with the dismissals. Consultation doesn't apply if there are no employees' representatives.

Collective redundancy
The employer must consult with employees' representatives one month before the planned date of collective redundancy, at the latest, about measures which could prevent or limit the collective redundancy and mitigate its adverse consequences and the possibility of alternative jobs within the employer. Before the consultation takes place, employees' representatives must be provided with written information on the collective redundancy, stating the reasons, the number of affected employees, the total headcount, the selection criteria of the dismissed employees and the period during which mass redundancy will take place. If there are no employees' representatives, the consultation or information obligation must be fulfilled with each affected employee.

If the employer serves termination notices to affected employees without prior consultation, notices are deemed null and void. If the employer fails to comply with consultation or information obligations within a collective redundancy, it must pay affected employees at least two times their average monthly wage as compensation (administrative fines may also apply). There is no remedy available, so it is essential to ensure compliance with consultation or information obligations.

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?

No. Employers only need to provide written information stating the reasons for a planned redundancy. Employers' decisions on redundancies cannot be challenged within the consultation process. Only employees may challenge the causal link between the employers' decision on redundancy and the employees' redundancy in court within the employment termination invalidity case.

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 must only consult on collective redundancies with individual employees if no employees' representatives operate at the employer. When consultation with employees is not required, it is also not customary.

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

In general, there are no prescribed criteria for the selection of employees for redundancy. In principle, only employees who were affected by the employer's decision on redundancy may be selected. Employers must also comply with equal treatment principles and anti-discriminatory rules.

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

No. There are only categories of employees with enhanced protection.

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

Yes. Enhanced protection against dismissal exists for disabled employees, employees on sick leave or maternity or paternity leave, pregnant employees, employees performing civic activities and union officials.

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 are entitled to a severance payment. A severance payment will be paid upon the termination of employment on the next pay date. If employment is terminated by notice, a statutory (paid) notice period applies.

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.

Employees may receive up to five times their monthly average wage, depending on the length of service.

For a termination agreement, they may receive:

- the average monthly wage for less than two years worked;
- two times the average monthly wage for between two and five years worked;
- three times the average monthly wage for between five and ten years worked;
- four times the average monthly wage for between ten and 20 years worked; and
- five times the average monthly wage for more than 20 years worked.

For a notice of termination, they may receive:

- the average monthly wage for between two and five years worked;
- two times the average monthly wage for between five and ten years worked;
- three times the average monthly wage for between ten and 20 years worked; and
- four times the average monthly wage for more than 20 years worked.

The average monthly wage consists of average monthly pay, including all bonuses, wage surcharges and similar payments received by the employee in the calendar quarter preceding the termination of employment.

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?

Yes. Before the consultation takes place, the employer must provide a copy of written information on the collective redundancy to the National Labour Office, stating the reason for the redundancy, the number of affected employees, the total headcount, the selection criteria for the dismissed employees and the period during which a mass redundancy will take place. Following the consultation, the employer must deliver a copy of written information on its outcome (minutes from the consultation) to the National Labour Office.

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

Yes. The employer must offer another suitable job position to affected employees. If there is no such position or if the employee rejects it, the employer may proceed with dismissal.

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 have no special information obligations towards public authorities after making redundancies, there is only a general obligation to notify the Social Security Agency and respective public health insurance providers about employees' dismissals.

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?

Yes. Employees may challenge the causal link between the employer's decision on redundancy and the employees' redundancy in court within the employment termination invalidity case. Employees' representatives cannot act on behalf of employees in such matters.

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

Yes.

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

Individual redundancy can be completed in less than a week. Well-organised collective redundancy can be completed within eight weeks.

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. Employers must not reopen cancelled job positions and hire new employees for such positions within two months of the dismissals.

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)?

Yes. Organisational changes such as a limitation or cancellation of the employer's activity or a part of it, or transformation (ie, merger, acquisition, disposal) or a change of legal form, including cross-border, must be consulted.

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?

Remedies are not available. It is essential to ensure compliance with consultation duties. However, failing to comply with consultation obligations has no impact on the transaction itself, only administrative fines may apply. Employees have no tools to prevent planned transactions.

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 affected by the business transfer are protected against dismissal, which is based solely on the reason for the business transfer. However, the employer may use other statutory reasons for dismissal. If there is a transfer of a single economic unit, employees must be transferred automatically and their current terms and conditions must be maintained.

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

Both original and new employers must inform the employees' representatives (or the affected employees directly if no employees' representatives operate) in writing, at least one month before the transfer takes place, of the following:

- the date or proposed date of the transfer;
- the reasons for the transfer;
- the employment, economic, or social consequences of the transfer on employees; and
- the planned measures that apply to employees.

To reach an agreement, both the original and new employers must, at the latest one month before implementing measures applicable to the employees (if any), discuss the measures with employees' representatives.

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

In principle, all existing rights and obligations of employees must be retained and transferred.

Changing Terms and Conditions

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

The employer cannot change these terms unilaterally if these form part of an employment contract. Mutual agreement (amendment to contract) is required.

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

Yes.

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

Implied conduct is capable of changing employment terms provided the respective term is not part of an employment contract. Otherwise, mutual agreement (amendment to contract) 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?

If the employee refuses to agree to an employment term variation, the employer must adhere to the terms as originally agreed.

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

Depending on the varied term, the consequences may start from the invalidity of such variation, through an administrative penalty up to criminal liability.

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Matúš Kočíšek is an Associate based in Bratislava office with significant experience in corporate and M&A and employment & labor law matters.

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