07_Statutory Requirements to Collective Redundancies_GITS[english]

The employer is faced with a collective redundancy situation, where the employer is about to dismiss a substantial number of workers or employees for one or more reasons not related to the individual workers and employees concerned. These are the cases of closing down the establishment wholly or in part, reduction of full-time staff on the payroll, shrinkage of the volume of business and suspension of activities for more than 15 working days. The criterion for defining layoffs as collective redundancies is their number compared to the number of people employed during the month preceding the termination of the contracts of employment at the initiative of the employer:

(a) at least 10 over a period of 30 days in establishments employing more than 20 and less than 100 workers and employees during the month preceding the collective redundancies;

(b) at least 10 % of the number of workers and employees in establishments employing at least 100 but less than 300 workers and employees during the month preceding the collective redundancies over a period of 30 days;

(c) at least 30 over a period of 30 days in establishments employing 300 workers and employees or more during the month preceding the collective redundancies.

It is important to note that if the employer has dismissed five workers or employees over a one-month period and decides to terminate the contracts of employment of other people in the following month, the employer has to check whether the collective redundancy criteria are met and then follow the relevant statutory procedures.

Where the total number of the workers and employees affected by the collective redundancies is calculated, it should not include those people whose contracts of employment have been terminated for reasons other than the decision of the employer or for reasons related to the individual person concerned, e.g. termination of the contract of employment at the mutual consent of the parties or at the proposal of the employer in exchange of a compensation, or unilateral termination of contracts with a probation period agreed to the employer’s benefit, or disciplinary dismissals, etc.

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The legal provisions in relation to collective redundancies are laid down in the Labour Code (LC) and the Employment Promotion Act (EPA). Where an employer is contemplating collective redundancies, he has to provide information in writing to the representatives of trade union organisations and the workers' and employees' representatives. This information has to specify the reasons for the projected redundancies, the number of workers and employees to be made redundant and the main economic activities, groups of professions or occupations and positions affected by the redundancies, the number of workers and employees in the main economic activities, groups of professions or occupations and positions in the establishment, the specific criteria proposed for the selection of people to be made redundant, the period over which the projected redundancies are to be effected, and the redundancy payments due.

The information on the period over which the projected redundancies are to be effected includes the following: the time when the redundancy process will start, whether it will be carried out "in portions", how many and at what intervals or whether the redundancies will be effected simultaneously, when the process will end, when the redundancy notices will be served, on what grounds the redundancies under Article 328(1) of the Labour Code will be effected, and whether the period after serving the notice will be considered a working period or compensations will be paid under Article 220 of the Labour Code, etc.

This obligation has been introduced to ensure that the relevant representatives will be aware of the main issues which outline the scope of the collective redundancies and the underlying situation in the establishment and to provide opportunities for them to take active part in the consultations which constitute the essence of the procedure under Article 130a of the Labour Code.

Within three working days, the employer has to send a copy of the information to the relevant subdivision of the Employment Agency (Labour Office Directorate). Where contracts of employment are terminated on the grounds described above, the specific situation has to be taken into consideration in the light of the selection requirement as a precondition for the redundancies to be considered lawful. The employer is not required to apply selection in the case of dismissal of all workers and employees rather than only some of them in the relevant position (e.g. in the case of closing down a part of the establishment).

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Where selection is required (in the case of reducing the staffing levels), its scope should exclude those workers and employees who enjoy absolute protection under Article 333 of the Labour Code, i.e. expecting mothers or female workers or employees in an advanced stage of their in-vitro treatment, or workers or employees on leave under Article 163 of the Labour Code.

After the obligation to notify the information is fulfilled, the employer may begin consultations with the representatives of trade union organisations and the workers' and employees' representatives. The consultations should start not later than 45 days prior to the date on which the redundancies are to be effected. In their essence, these consultations are discussions or negotiations intended to make efforts for the purpose of reaching an agreement between the parties so that to avoid or reduce the collective redundancies and to mitigate their effects (e.g. reduction of the number of workers and employees affected by the redundancies, increased redundancy payments, offer of training and retraining courses, and others). The employer's obligation to conduct consultations, within the meaning of Article 130a of the Labour Code, is deemed to be fulfilled even when the participants in these consultations fail to reach an agreement.

In accordance with the requirements laid down in Article 130a of the Labour Code, the redundancies are to be effected not earlier than 30 days after the notification of the Labour Office Directorate and not earlier than 45 days after the start of the consultations with the trade union organisations and the workers' and employees' representatives, i.e. a period of 45 days after the opening of the redundancy process has to elapse for the purpose of observing both statutory time limits. In the event of breaches, the employer is to pay a pecuniary sanction or a fine and the relevant officials is punished with a fine.

It is particularly important to underline that the failure to carry out the notification and consultation procedure does not provide grounds to adjudicate that the dismissal is unlawful in a possible court case, i.e. the only legal effect is the administrative liability of the employer and the imposition of a pecuniary sanction.

Parallel to the procedure outlined above, the employer has to meet the requirements laid down in the Employment Promotion Act by sending a notification in writing to the relevant

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subdivision of the Employment Agency on the projected collective redundancies not later than 30 days prior to the date on which they are to be effected. Its content is almost identical to the one required under the Labour Code with the addition that the notification should include information on the outcome of the preliminary consultations held with the representatives of the trade union organisations and the workers' and employees' representatives. The employer has to send the latter a copy of the notification within three working days.

After the notification is received, a team is set up with a representative of the employer, workers' and employees' representatives, a representative of the Employment Agency and a representative of the municipal administration to draft the relevant measures to provide employment to the workers and employees concerned. Failing to follow this procedure, the employer is punished with a fine or a pecuniary sanction.

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