

January 2016

## **Collective Redundancies and Reorganisations**

### **Bulgaria**

#### **Summary**

In Bulgaria the legal frame of collective redundancies is regulated in the Labour Code. The definition used in the code is “Mass discharge” and means a discharge carried out as per the decision of the employer, on one or more grounds, and by reasons not related to the worker or employee in question.

#### **When do the provisions apply?**

The provisions of the Labour Code applicable to mass discharge shall apply at any case when the number of the discharged employees is:

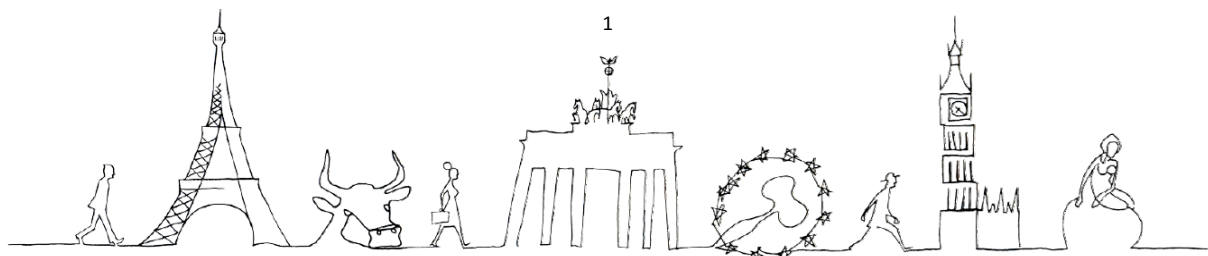
- a) at least 10 people in enterprises where the number of personnel hired in the month preceding the mass discharge has been more than 20 and less than 100 workers and employees for a period of 30 days;
- b) at least 10 percent of the number of workers and employees in enterprises where the number of hired in the month preceding the mass discharge has been at least 100, but not more than 300 workers and employees for a period of 30 days;
- c) at least 30 people in enterprises where the number of the hired in the month preceding the mass discharge has been at least 300 or more workers and employees for a period of 30 days;

In all of the cases, the above mentioned general criteria as per the legal definition must be met.

#### **What are the requirements?**

According the Labour Code prior to making a mass discharge the employer has the following obligations, which guarantee the legality of the discharge:

- To conduct consultations and discussions with the employee representatives in due time, but not later than 45 days prior to the discharge;
- To make efforts to achieve an agreement with the employee representatives in order to avoid or restrict the number of the mass discharge and to ease the consequences of it;



- Regardless of whether the employer or another legal entity has made the decision, which has led to a mass discharge, before the beginning of the oral consultations, the employer is obliged to present written information to the representatives of the trade union organizations and to the representatives of the workers and employees, regarding:
  1. the reasons for the discharge;
  2. the number of the workers and employees to be discharged and the basic economic activities, groups of professions and positions to which they refer to;
  3. the number of the workers and employees, employed in the basic economic activities, groups of professions and positions in the enterprise;
  4. the particular indices for application of the criteria for the choice of the workers and employees to be discharged;
  5. the period during which the discharge shall take place;
  6. the indemnities due, related to the discharge.

After providing the abovementioned information the employer is obliged to send a copy to the respective unit of the Employment Agency within three working days.

The scheduled mass discharges cannot take effect earlier than 30 days as of the notification to the Employment Agency, regardless of the periods of notice.

#### **Who are “appropriate representatives”?**

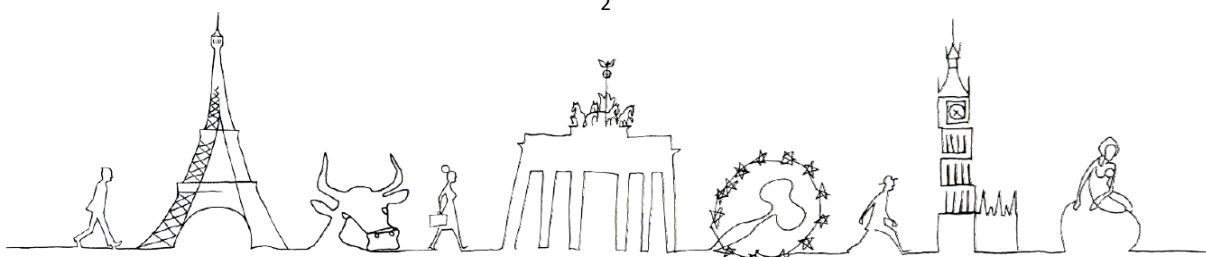
In certain matters defined by law employees are allowed to participate in the management of an enterprise, through elected representatives which represent their common interests on the matters of labour as well as insurance relations, before their employer and before the state bodies.

These representatives are elected by the General Meeting of the workers and employees with a majority of more than two thirds of the members of the General Meeting. The General Meeting shall consist of all workers and employees in the enterprise. Employees are entitled, with no prior permission, to freely form, by their own choice, trade union organisations. They are allowed to join and leave them on a voluntary basis, showing consideration for their statutes only.

In enterprises, including temporary work agencies, with 50 and more workers and employees, as well as in organizationally and economically separated units of enterprises with 20 and more workers and employees, the General Meeting conducts a selection among its members to act as representatives.

The General Meeting may assign certain functions to the representatives, determined by the governing bodies of the trade union organisations or respectively to the representatives of the workers and employees.

The number of the staff acting as representatives shall be determined on the basis of the average monthly number of workers and employees for the period of 12 months prior. The number of the



representatives of the workers and employees shall be determined in advance by the General meeting, in the following ratio:

- for enterprises with 50 to 250 workers and employees – from 3 to 5;
- for enterprises with more than 250 workers and employees – from 5 to 9;
- for organizationally and economically separated units - from 1 to 3.

There is no requirement under the law for individual consultations with the potentially discharged employee, however it is recommended for the purpose of avoiding possible legal claims against the employer.

### **What sanctions apply if the process is not followed?**

In cases of discharge due to the closing down of an undertaking or part of it, staff cuts or reducing the workload, the compensation shall be in the amount of the gross salary for the time during which the employee has remained unemployed, but for no longer than 1 month. The employee is also entitled to financial compensation for unused annual leave for the current calendar year.

An employer who violates the provisions of the respective article of the law regarding the right to information and consultation in cases of collective discharge shall be liable to a pecuniary penalty or a fine of BGN 1,500 to BGN 5,000, and a guilty official shall be charged a fine of BGN 250 to BGN 1,000 for each violation.

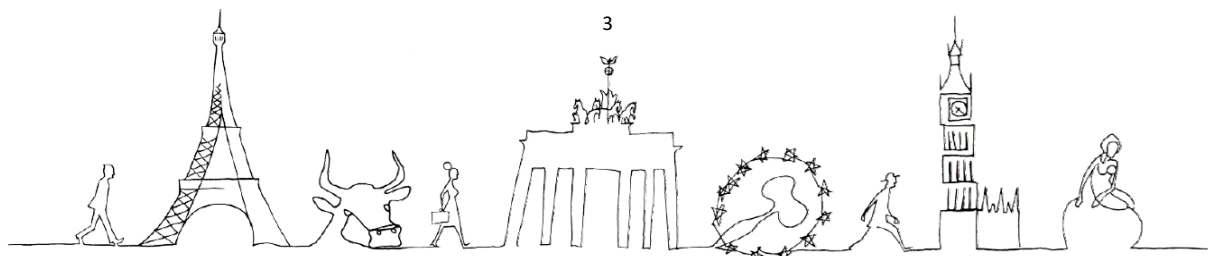
### **Are certain employees protected from dismissal?**

Yes, there are certain protections available to some categories of personnel, such as mothers of young children up to 3 years old, employees suffering from certain diseases, listed in a Regulation of the Minister of Health, pregnant workers or employees as well as workers or employees in advanced-stage of in-vitro fertilization procedure, etc.

### **How do I choose which employees to dismiss?**

There are specific indicators for the application of a selection criteria under sections of the law that state that upon the closure of a part of an undertaking, as well as staff cuts or reduction in the volume of work, the employer has the right to make a selection and he/she may in the interest of the production or the office dismiss workers and employees, who's positions may not be subject to cuts in order to keep at work those who have higher qualifications and perform better. Generally the discharge criterion is developed by each employer based on internal decisions.

In the broader terms of employment law discharges should not be based on gender or age. Mass discharges should be by reasons, which are not related to the certain worker or employee. The selection criteria should also be discussed with the respective representatives of the workers and employees at the start of the consultation process.



### **What will it cost?**

Aside from statutory discharge payments, there are no direct costs for making redundancies, although the minimum consultation and notice periods can result in some costs.

Discharged employees are sometimes entitled to a notice in accordance with the terms of their contract.

Employees may also be entitled to receive some additional payments under the terms of their contracts.

### **Are staff required to work during the consultation process?**

Employees are required to work, in accordance with their contract of employment, until their employment ends. There is no general right for employees to be released early. However an employer may allow his employees to take an additional period of paid leave during the consultation process.

### **Can I ask employees to sign a waiver agreement?**

No.

### **Do I need consent from a public authority?**

No.

### **Can disgruntled employees bring claims?**

Yes. Employees can bring claims for unfair dismissal, and/or for a failure to inform and consult, before the courts.

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