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Collective Redundancies and Reorganisations

Finland

Summary

A collective redundancy or *termination of an employment contract by notice on financial and production-related grounds* comes into question for a proper and weighty reason if work to be offered diminishes substantially and permanently. A notice is served to the employee and the employment ends after the expiry of the notice period. The employer has to pay wages and the employee has to continue to work until the end of the notice period unless otherwise agreed.

Requirements for a collective redundancy

Termination of an employment contract on collective grounds is subject to existence of a *proper and weighty reason* for the redundancy deriving from reasons that:

- (i) the work to be offered has diminished substantially and permanently for financial or production-related reasons or for reasons arising from reorganization of the employer's operations; and
- (ii) the person cannot be placed in or trained for other duties.

Grounds for the termination on collective grounds specifically *do not exist* if:

- (i) either before the termination or thereafter the employer has employed a new employee for similar duties even though the employer's operating conditions have not changed during the equivalent period; or
- (ii) no actual reduction of work has taken place as a result of work reorganization.

The co-operation obligation

Employer, which normally employs at least 20 persons, has to fulfill the co-operation obligation before making any decisions regarding especially collective redundancies. The obligation provides basically that the employer has to negotiate with the employees or their representatives for a minimum period before he can make any decisions on redundancies, lay-offs or reductions in working time. The objective of the co-operation negotiation is that the employees collectively have an opportunity to develop operations of an undertaking and to exercise influence in the decisions made within the undertaking relating to their work, their working conditions and their position in the undertaking.



The negotiations shall normally last from fourteen days to six weeks.

If the employer has made a decision concerning reductions in workforce without duly observing the co-operation procedure, the affected employees may be awarded individual indemnification. The maximum amount of the indemnification is EUR 30 000 per employee. Indemnifications can be awarded irrespective of the legality of the measure, such as redundancy, itself. Thus the illegality of the reduction may cause further sanctions.

Employee representatives, collective agreements and the employment authorities

The employees in Finland are represented normally by elected representatives, who communicate between the employees and the employer as well as the trade unions especially during co-operation processes.

The applicable collective agreements may contain regulations regarding e.g. proceedings, terms and selection or reassignment criteria, and their provisions must be observed when considering redundancies.

In relation to collective redundancies, the employment law sets forth the obligation to consult the employment authorities in order to i) explain to the employee to be dismissed the employment services available from the employment office as well as to ii) notify the employment office regarding the termination.

Freedom of selection and reassignment criteria

In principle, the employer has the right to choose its employees. This right is limited by the prohibition of discrimination, specific protected classes of employees and the possible reduction order provisions included in some collective agreements.

On collective grounds, the employer is entitled to terminate the employment contract of an elected representative only if the work of the elected representative ceases completely and the employer is unable to arrange work that corresponds to the person's professional skill or is otherwise suitable, or to train the person for some other work.

The employer shall not terminate an employment contract on the basis of the employee's pregnancy or because the employee is exercising his or her right to the family leave.

An employer is entitled to terminate the employment contract of an employee on maternity, special maternity, paternity or child leave on collective grounds only if its operations cease completely.

An employment contract may not be terminated on collective grounds, if the employee can be placed in or trained for other duties. The law provides that employee shall primarily be offered work



that is equivalent to that defined in his employment contract. If no such work is available, he shall be offered other work equivalent to his training, professional skill or experience.

The employer has the obligation to provide employees with training required by new work duties that can be deemed feasible and reasonable from the point of view of both contracting parties.

In addition, if an employee is given notice on collective grounds, and the employer needs new employees within nine months of termination of the employment relationship for the same or similar work that the employee given notice had been doing, the employer shall offer work to this former employee if the employee continues to seek work via an employment office.

Costs for making an employee redundant

Costs for making an employee redundant consist of the salary and other benefits as well as the holiday compensation from the notice period. If the payment of debt arising from the employment relationship is delayed e.g. due to a dispute, the employee is entitled to full pay from for the waiting days, though not more than a maximum of six calendar days, in addition to penalty interest.

Unless otherwise agreed, the notice periods to be observed vary from 14 days to six months depending on how long the employment relationship has continued uninterruptedly. During the notice, in principle, the employer has the obligation to continue to pay wages as well as other possible employment related benefits and the employee has the obligation to continue to work.

Severance payments can be used either as a compensation for damages e.g. in cases where it is uncertain whether proper and weighty reasons for termination of employment exist or as extraordinary golden handshakes. The amount of a severance pay can range up to several years' salary.

Necessary documentation

An employee is made redundant by a notice of termination, by cancellation or by an agreement. If it is not evident from the paperwork, or if the person is made redundant verbally, at the employee's request, the employer has to notify the employee without delay in writing of the date of termination of the employment contract and of the grounds for termination or cancellation.

If a co-operation procedure has to be followed, it requires certain extra documentation, such as the proposal for negotiations and the employer's report. In addition, a plan of action to promote employment has to be drafted if the employer plans to make at least ten employees redundant.

Usually a certificate of employment regarding the employment relationship and the nature of the work duties is drafted for the employee. At the specific request of the employee, the certificate shall



include the reason for the termination of the employment relationship and an assessment of the employee's working skills and behavior.

Termination process

Serving an employee a notice of termination starts the notice period, after which the employee's employment relationship ends. In principle a notice of termination should be given to the employee in person.

As a default, the employee has the working obligation during the notice until the end of the employment, unless otherwise agreed with the employer. Giving the employee a garden leave does not free the employer from the obligation to continue to pay wages and other agreed benefits.

If the redundancy is challenged by either party in court, civil process rules are applied. For unfair dismissal the employer may become liable for paying compensation amounting to 3-30 months' salary.

This material is for general information only and is not intended to provide legal advice.

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