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Collective Redundancies and Reorganisations

France

Summary

French employment law distinguishes between:

- Individual economic dismissals;
- Collective economic dismissals which concern 2 to 9 employees; and
- Collective economic dismissals that concern at least 10 employees.

A dismissal is considered “economic” if it is based on a reason which is unrelated to the employee and which results from:

- A reduction or change in the workforce;
- A substantial change to the employment contract due to economic difficulties or technical changes. When 10 or more employees refuse a substantial change to their employment contract, which is proposed by their employer on economic grounds, their dismissal will be considered an economic dismissal; or
- The reorganisation of the company, where such reorganisation is needed to preserve the company’s competitiveness.

What are the requirements?

Under French law, economic dismissals have to be justified by real and serious grounds, meaning that the employer has to prove that the company has economic difficulties making the dismissal inevitable (insolvency, financial loss, a drop in turnover, serious cash difficulties, etc.) or that the reorganisation is needed to preserve the company’s competitiveness.

The information and consultation process

a) Works Councils or staff representatives

There are no specific obligations to inform and/or consult with the works council (or staff delegates) in the case of an individual economic dismissal. Such an obligation may, however, arise if the dismissal has an impact on the general running of the business and on determining which employee will be dismissed (“*critères d’ordre*”).



Employers are, however, required to inform and consult with the works council (or staff delegates) over collective redundancies.

b) Trade Unions

There is no legal obligation to inform or consult with trade unions in the event of economic dismissals. However, if the company employs at least 50 employees and the redundancy affects at least 10 employees, a "plan de sauvegarde de l'emploi", or "plan to safeguard employment" must be negotiated with trade union representatives.

c) Public Authorities

Where an economic dismissal procedure concerns 9 employees or less, the company must inform the Labour Administration by sending it copies of the termination letter(s).

Where the economic dismissal procedure concerns 10 employees or more, the relevant authorities (namely the DIRECCTE) must receive copies of all documents sent to the works council prior to the consultation meetings, as well as the minutes of each meeting and the schedule of dismissals. The Labour Administration must also approve the draft "plan de sauvegarde de l'emploi".

d) Sanctions if the process is not followed

Failure to consult with the relevant staff representatives may result in civil and criminal sanctions, specifically the cancellation of the termination procedure, the award of damages to the works council, and penalties of EUR 3,750 per employee.

The selection process

a) Freedom of selection criteria

Unless otherwise provided in the applicable collective agreement, the employer must, in principle, apply set legal criteria, namely family situation, length of service within the company, and specific matters that would make the employee's re-employment difficult (including age or disability and professional skills).

b) Protected class of employees

Staff representatives benefit from special protection against dismissal. An employer can only dismiss these employees after it has consulted with the works council (except for trade union delegates), and been granted written authorisation by the Labour Inspector.



c) Re-assignment criteria

A company carrying out a redundancy process must look for re-assignment opportunities before dismissing the employee(s). If the company is part of an international group, this redeployment obligation is not limited to France.

Costs / employee benefits

a) Severance pay

Each dismissed employee is entitled to a statutory (if he has more than one year's service) or conventional dismissal indemnity and to be paid for any outstanding holiday (if it is not taken before the dismissal).

b) Notice period

Dismissed employees are entitled to a minimum of one month's notice if they have at least 6 months' service, and a minimum of two months' notice if they have more than **[please insert]** months' service. If an employee accepts the "*contrat de sécurisation professionnelle*", or "professional security contract", he/she renounces the right to notice or pay in lieu of notice.

c) Non-financial benefits

Redundant employees benefit from "re-hiring priority" for one year following the end of their notice period. The dismissed employee will need to inform the company that she/he wants to benefit from this priority.

d) Necessary documentation

An employee whose contract is terminated must be given a work certificate ("*certificat de travail*"), a document detailing the amounts received ("*reçu pour solde de tout compte*") and a statement for the French employment agency ("*Pôle Emploi*").

Termination process

a) Notice

Each potentially redundant employee must be invited by the employer to a preliminary meeting. The employer must then send a dismissal letter to each employee, which includes the detailed economic



grounds for dismissal, the effect on the employment contract, and any proposals for redeployment (including time off for **[please confirm: training]**).

b) Settlement agreements

A settlement agreement will only be valid if it is concluded after the dismissal is carried out and if the dismissal has given rise to a dispute. The employee must also receive an additional payment, over and above the amount he/she is legally entitled to receive.

Court proceedings

If a dispute arises concerning an economic dismissal, the following courts might have jurisdiction depending on the litigation: (i) “*Conseil de Prud’hommes*”, (ii) Administrative Courts, (iii) “*Juge des référés*” sitting in the “*Tribunal de Grande Instance*” or (iv) Criminal Courts.

Before the employment courts, the parties are convened to a preliminary conciliation procedure before the Conciliation and Orientation Committee of the court (“*Bureau de Conciliation et d’orientation*”). If conciliation proves to be impossible, the case will be postponed to a new hearing before a Judgment Committee (“*Bureau de Jugement*”).

It is then possible for a party to lodge an appeal against the decision of the Employment Courts (before the Court of Appeal) or the Administrative Courts (before the Administrative Appeal Court).

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

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