January 2016

Collective Redundancies and Reorganisation

Ireland

Summary

If an employer is considering making large scale redundancies in the Republic of Ireland there are specific provisions applicable where 10% or more of staff in a business may be made redundant. There may be additional information and consultation requirements with staff for businesses under the Employees (Provision of Information and Consultation) Act 2006 and for multinational employers with at least one thousand employees across member states and a minimum of 150 employees in two member states under the Transnational Information and Consultation of Employees Act 1996 as well.

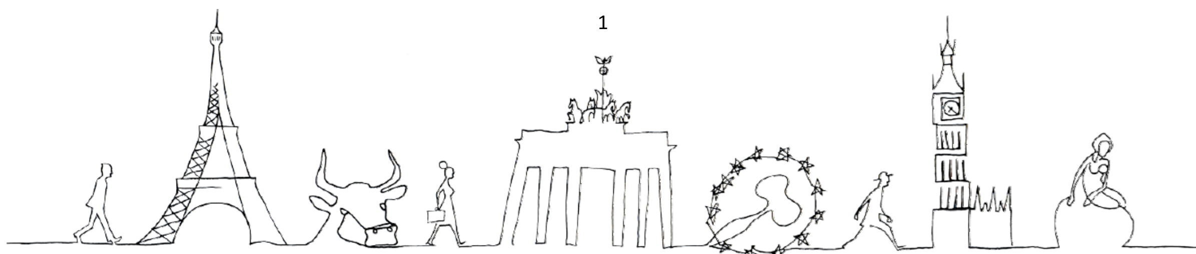
When do the provisions apply?

The provisions apply if in a period of 30 consecutive days at least 5 staff in an establishment normally employing 21-49 employees, or 10 in an establishment 51-99 employees, or 10% of employees in an establishment 101-299, and 30 in an establishment normally employing 300 or more employees are proposed to be made redundant by an employer. Redundancy is a dismissal which is not connected to the employee but is due to a change in the requirements of the business. This includes a change of location of the business, or where the business ceases carrying out work of a particular kind, or where the business is streamlining its functions and requires fewer or no employees or changes the way in which the work is being carried out, and for which certain employees are not sufficiently qualified. It also includes a situation where an employer dismisses and re-engages employees on new terms and conditions.

What are the requirements?

Prior to making collective redundancies, an employer must;

- notify the affected employees and their representatives of the potential redundancies



- notify the Minister for Jobs, Enterprise and Innovation of the potential collective redundancies at least 30 days before the first dismissal
- consult with the employees and their representatives at least 30 days before the first dismissal furnishing specific information, and consider avoiding or mitigating the proposed redundancies, redeploying or retraining staff and the basis for selection of employees being made redundant

Who are the “employee representatives”?

The employee representatives are officials of a trade union, staff association or excepted body or persons chosen by the staff likely to be affected by the collective redundancies to represent them. Employers must also consult with employee representatives selected under the Employees (Provision of Information and Consultation) Act 2006 who may be directly elected by the employees, if applicable. Consultation with individual employees by the employer should take place as well to prevent legal disputes.

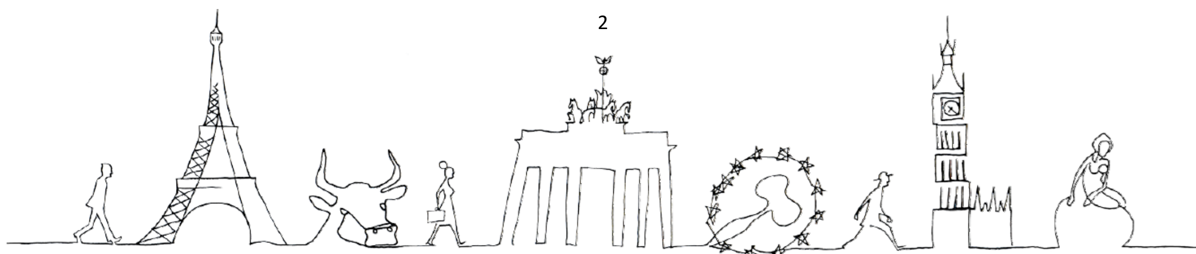
What sanctions apply if the process is not followed?

Failure to comply with the consultation process can lead to an award of up to 4 weeks annual remuneration for each employee and an order directing compliance with the law. In addition, it is a criminal offence if an employer issues a notice of redundancy to an employee during the 30 day consultation period. An employer can be liable on indictment to a fine of a maximum of 250,000 euro for a breach.

Collective redundancies cannot take effect before the expiry of 30 days. Any agreement which tries to limit the operation of these provisions is void.

Are certain employees protected from dismissal?

No employees are not protected from dismissal and their only remedy is a potential award of 4 weeks annual remuneration.



How do I choose which employees to dismiss?

An employer may have an agreement in place with trade unions, staff associations, excepted bodies or staff representatives which provides for a selection process for redundancy for example “last in first out”. Whether an employer has previously made other staff redundant and the selection process used then, may through custom and practice be relied on by an employee.

Fair procedures must be followed in effecting a dismissal due to redundancy. Fair procedures vary depending on the contract of employment and company policy. Employers cannot dismiss an employee due to trade union activity, pregnancy, political or religious opinions or on the basis of age, nationality, sexual orientation, gender, membership of the travelling community, civil status, family status, or disability.

Employers may be in a position to choose criteria to select staff for redundancy and if so, the criteria should be objective. This may include skills, training, qualifications, attendance and disciplinary records.

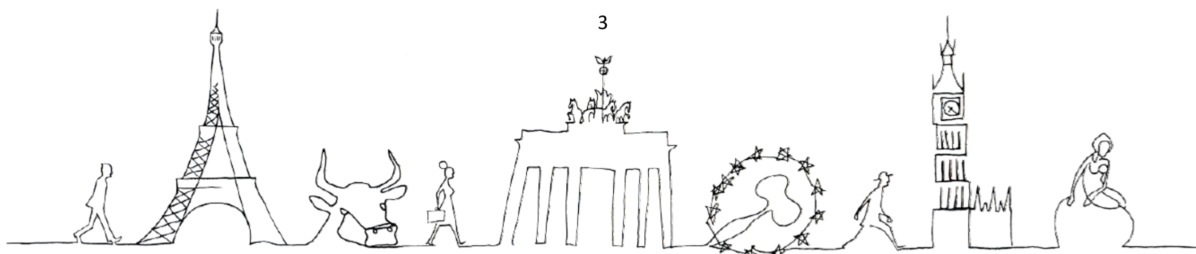
Redeployment and alternative roles within the business and wider business units should also be considered.

Unfair dismissal

An employee must have 12 months continuous service to make a claim for unfair dismissal unless the employee claims that his dismissal is due to trade union activity, pregnancy, political or religious opinions where there is no minimum service requirement. From 1st October 2015 all claims for unfair dismissal will be made to the Workplace Relations Commission and the Workplace Relations Commission adjudicator can order re-instatement (the employee returns to work in their old position), re-engagement (the employee returns to work in a new position within the company) and or compensation of up to two years’ gross remuneration to the employee.

What will it cost?

Employees with 2 years continuous service are entitled to a statutory redundancy payment, minimum and contractual notice and payment during the consultation period. The statutory



redundancy payment is 2 weeks per year of service plus one additional week, capped at 600 euro per week. Some employees may have an entitlement to ex-gratia redundancy payments through collective bargaining or custom and practice, in addition.

Are staff required to work during the consultation period?

Employees who have been notified of their dismissal due to redundancy are entitled to reasonable time off but are otherwise required to work. Depending on contractual provisions employers may be entitled to place employees on "garden-leave" where employees are still employed but not required to attend work or to pay the employee in lieu of notice.

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

For more information on employment law in Ireland, please contact: Davnet O'Driscoll, Amorys Solicitors, at Davnet@amoryssolicitors.com.