

January 2016

Collective Redundancies and Reorganisations

LUXEMBOURG

Summary

In Luxembourg, the collective redundancy procedure applies when an employer decides to dismiss a certain number of employees, during a certain period, for reasons other than individual grounds (article L- 166-1 of the Labour Code). In such a case, the employer must negotiate a social plan with the staff representatives before beginning the dismissals.

When do the provisions apply?

The provisions apply when a Luxembourg based entity is contemplating dismissing at least 7 employees within 30 days, or at least 15 employees within 90 days, for one or several reasons unrelated to the employees' conduct at work, i.e. for economic reasons.

For these purposes, "dismissal" means the termination of an employment agreement at the employer's initiative which is not related to the employee's behavior.

What are the requirements?

The employer must inform the Luxembourg National Employment Administration (ADEM "*Agence pour le développement de l'emploi*") (article L. 166-4 (1) of the Labour Code) and the staff representatives, that it is contemplating carrying out a collective redundancy.

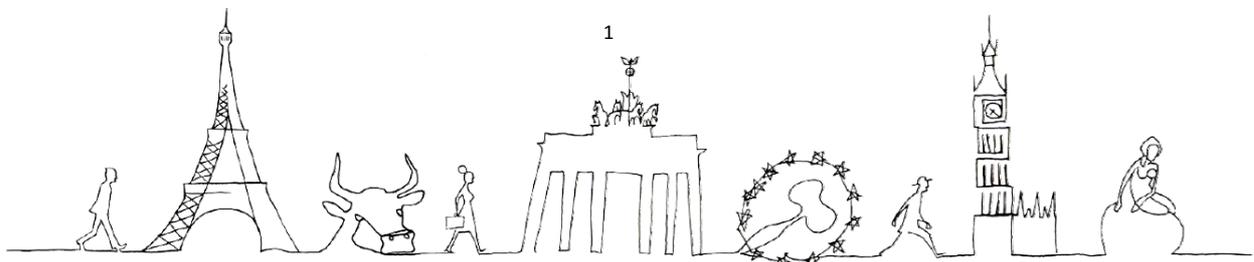
During a 15-day period, the employer and the staff delegation shall negotiate a social plan in order to avoid and/or mitigate the consequences of the collective redundancy.

If the parties fail to conclude a social plan, further negotiation between the employer and the staff representatives shall take place before the Luxembourg National Conciliation Service (*Office National de Conciliation*).

The employer may notify each redundant employee individually once the social plan is signed, or once the parties have duly recorded that they have been unable to conclude a social plan in the presence of the National Conciliation Office.

Who are "appropriate representatives"?

The staff delegation and the joint works councils, if any, shall be informed by the employer when it decides to make collective redundancies. There is no obligation to have a staff delegation when the



company has less than 15 employees and in such a case, the employer shall warn the employees directly.

When the employer is bound by a collective labour agreement, the employer shall warn the trade union(s) which are party to such agreement (article L. 166-2 (3) of the Labour Code).

What sanctions apply if the process is not followed?

All dismissals for reasons other than individual motives, which took place before the signature of the social plan, are considered null and void. All employees dismissed in such circumstances can bring a claim before the Labour Court within 15 days from the termination, to obtain reinstatement. Furthermore, the employees dismissed in such circumstances are entitled to claim damages.

Are certain employees protected from dismissal?

Yes. Employees benefiting from protection against dismissal have the same protection in the case of collective dismissal. The following employees are protected: (i) employees in staff delegations and employee representatives, (ii) employees on sick leave, (iii) employees on maternity and parental leave and (iv) employees under fixed-term contracts.

How do I choose which employees to dismiss?

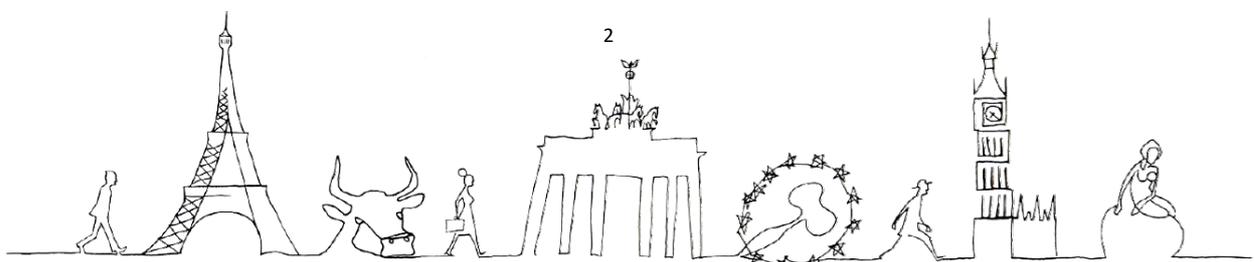
Save in respect of those employees who are protected from dismissal mentioned above, there is freedom of selection criteria. The employer is free to determine the applicable selection criteria as long as the criteria are not discriminatory. These criteria shall be mentioned by the employer prior to beginning negotiation of the social plan.

What will it cost?

The employer negotiates the compensation with the staff delegation as part of the social plan. These compensation payments cannot be lower than the compensation payments due for dismissal with notice. The social plan specifies the minimum compensation to be paid.

Severance payments are applicable in cases of collective redundancy (article L. 124-7 of the Labour Code). The amount depends on the employee's seniority. An employee with more than five years' service is entitled to one month's salary as a severance payment. For each additional period of five years, the employee is entitled to an additional one month of salary. No other benefits are mandatory.

The social plan may also provide for additional compensation to be paid to the employees made redundant.



Are staff required to work during the consultation process?

Yes. After signature of the social plan, the employer can proceed to serve notice of dismissal. Such dismissals take effect after a minimum notice period of 75 days. This notice period can be increased by up to 90 days by the decision of the Minister of Labour.

Employees have a duty to work during the notice period and until the end of such notice period, unless the employer has expressly released them from such duty.

The employer is free to release the employee from work duties (garden leave). Such release can be notified in the termination notice or in a subsequent letter. Such release does not release the employer from paying the employee's salary during the notice period.

Can I ask employees to sign a waiver agreement?

The employer and the employee may sign an agreement in order to avoid legal proceedings. However, if the conditions set in the social plan are respected, a settlement agreement is not required.

Do I need to inform a public authority?

Yes, the employer must notify the public authority (ADEM) of the planned collective redundancies, at the latest by the beginning of the negotiation of the social plan. The notification must set out the grounds of the collective dismissal, the number and categories of employees concerned, the total number of employees, the period during which the dismissals are contemplated, the selection criteria and (as the case may be) the method for calculating compensation payments.

Can disgruntled employees bring claims?

Where the employer has not followed the provisions of the Labour Code on collective redundancies, the employee may, within 15 days from the termination, require the President of the Labour Court to declare the termination null and void and reinstate the employee. The decision of the President of the Court can be appealed within 40 days from its notification. If the employee has not required the President of the Labour Court to declare the nullity of the dismissal, the employee is entitled to damages and may start court proceedings to obtain compensation for unfair dismissal.

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

