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LAW
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January 2016

Collective Redundancies and Reorganisations

Poland

Summary

Polish law provides for specific rules applicable to termination of employment for reasons not related to employees, in particular collective redundancies. The employer is generally free to take the decision on termination for such a reason and – as long as the reason is true, real, and specific – the employee is not in a position to challenge the termination decision before the labour courts. That said, the collective redundancies process is rather formalised, and the employer must follow the rules prescribed by law in order to avoid claims by dismissed employees based on procedural omissions (lack of notification, improper consultation, or neglecting to set fair criteria for selecting employees for redundancy). If the collective redundancy procedure is not adhered to or is breached, the employees may be reinstated to their positions or awarded compensation by the labour court. There are no criminal sanctions for failure to observe the laws on collective redundancies.

When do the provisions apply?

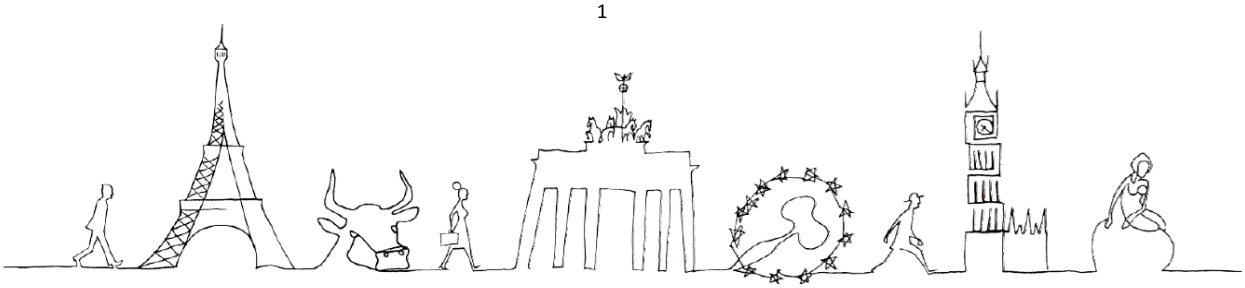
The provisions of Polish labour law regarding collective redundancies apply where an employer employing at least 20 employees finds it necessary to terminate some employment relationships for reasons not related to the employees, by way of termination notice made by the employer or by way of mutual consent if, over a period not exceeding 30 days, the redundancies relate to:

- At least 10 employees, where the employer employs less than 100 employees;
- 10% of the employees, where the employer employs at least 100 but less than 300 employees;
- 30 employees, where the employer employs 300 or more employees.

The above employee headcount thresholds encompass employees with whom termination of employment relationships occurs based on mutual consent or at the initiative of the employer within the collective redundancies, provided that this relates to at least 5 employees.

If the above thresholds are not reached, the redundancies should assume the form of individual terminations.

The term "reasons not related to employees" is understood broadly, and it includes business reasons, restructuring, reorganisation, technological changes etc.



What are the requirements?

The procedure for collective redundancies requires that the employer:

- Consults with the trade unions operating in the employer's establishment about its intent to effectuate collective redundancy;
- Notifies the trade unions operating in the employer's establishment in writing about the causes of the intended collective redundancy, the number of employees and professional groups selected for redundancy, proposed criteria for such selection, the period over which the process will be carried out, the sequence of redundancies, and proposals on resolving labour issues connected with the intended redundancy;
- Notifies the local labour office in writing;
- Draws up an agreement with the trade unions operating in the employer's establishment which defines the procedure with respect to the employees to be made redundant; should the parties fail to reach such an agreement within 20 days after notice to the trade unions, the employer must then draw up regulations defining the redundancy process;
- Notifies the local labour office in writing of the agreement reached, or the regulations adopted (if no agreement has been reached), by the employer with respect to the redundancy process.

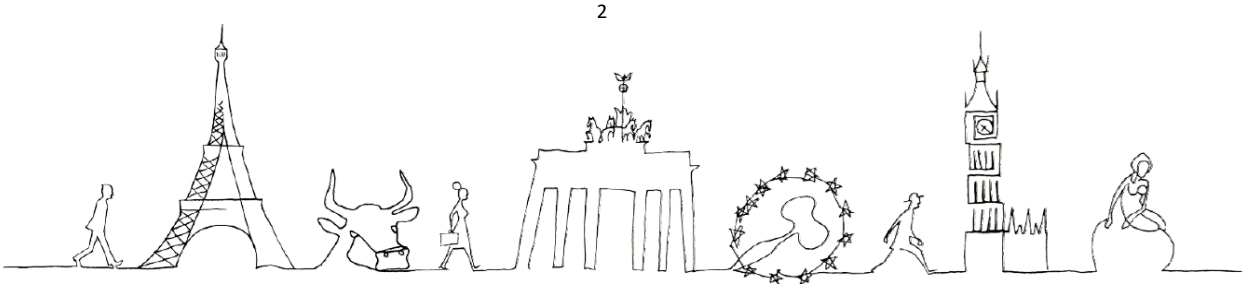
Termination of the employment relationships of the employees selected for redundancy may be effectuated not sooner than 30 days after the notification submitted to the local labour office.

Who are "appropriate representatives"?

Where there are no in-house trade unions active at the employer's establishment, their rights connected with the collective redundancy procedure are to be vested in the employee's representative selected by way of the procedure adopted at the given employer. The employer shall prepare regulations defining the redundancy process upon consulting with such representative.

What sanctions apply if the process is not followed?

If the collective redundancy procedure is not adhered to or is breached in any way, or if there is no legitimate reason for the termination, the employees may be reinstated or awarded compensation by the labour court.



If the employee is reinstated, the court awards a compensatory wage (two months' remuneration). Compensation shall amount to the remuneration due for a period ranging from two weeks to three months, but to not less, however, than the remuneration for the period of notice.

There are no criminal sanctions for failure to observe the laws on collective redundancies.

Are certain employees protected from dismissal?

Yes. In fact, such protection is afforded to quite a broad number of employee categories, in particular to:

- Employees in their pre-retirement period (i.e. with not more than 4 years to go before achieving retirement entitlement age);
- Expecting mothers, women on childcare leave;
- Fathers on childcare leave;
- Members of the employee council of a state-owned enterprise;
- Members of the board of an in-house trade union;
- Employees serving as social labour inspectors;
- Employees drafted for active military service, substitute service, basic military service, or military training.

The proscriptions concerning redundancy of specific employee groups amount to special protection of the employment relationship (irrespectively of the exact legal form which this employment relationship assumes). If an employer violates such a proscription, the redundancy shall be effective (i.e. the employment relationship will be terminated), but the employee concerned shall have recourse to the labour courts, where she may plead that her employment relationship has been terminated contrary to applicable laws.

How do I choose which employees to dismiss?

An employer effectuating redundancies for economic reasons should be able to defend this decision by demonstrating that it applied objective, fair criteria when choosing the employees affected. Juxtaposition of the situation of the employee made redundant to that of other employees ought to proceed within the same employee group (i.e. similar responsibilities, similar positions) and take into account objective criteria such as duration of employment, formal education, actual qualifications, professional experience, career to date, or special skills.

The criteria for redundancy ought to be not only objective and fair, but also clear and transparent for the employees to whom they will be applied. Polish legal practice is not definite as to whether the employer is legally obligated to specify the criteria for redundancy in the termination notice served on a specific employee, although the recent judicial authorities tilt towards imposing such a duty. It may be a good idea to expressly state these criteria also because, in the event of an ensuing dispute, these criteria will be subject to scrutiny by the labour courts and, if they are found insufficient, they may be taken as basis for challenging the termination.

Unfair dismissal

In accordance with established lines of authority, the labour courts do not assess the basic soundness of the organisational and economic considerations informing group redundancies on the part of the employer. In other words, every instance of redundancy citing grounds not attaching to the employee shall be recognised as such on its face value, even if its economic rationality may give rise to questions; no action for unfair dismissal may be brought from this angle. Unfair dismissal may be pleaded, however, if the employer somehow violates the group redundancy procedure, or if a group redundancy includes an employee who benefits from special protection, as discussed above.

What will it cost?

Employees dismissed in collective (and individual) redundancies are entitled to statutory severance pay.

The severance pay depends on the length of employment and is equal to:

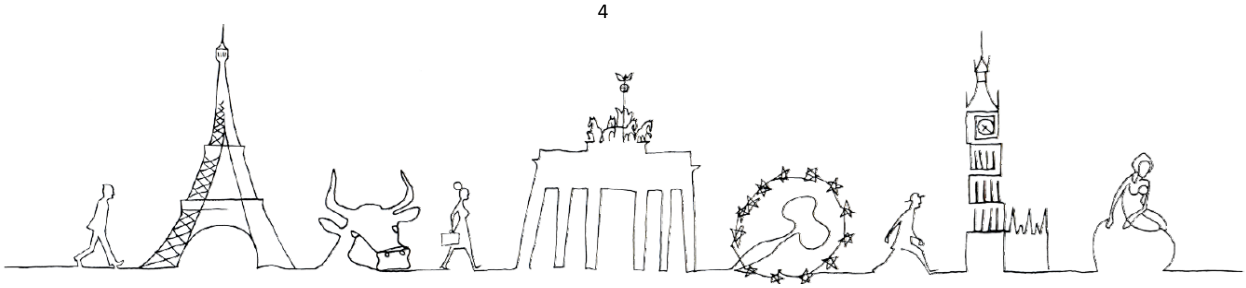
- 1 month's remuneration if the length of employment is shorter than 2 years;
- 2 months' remuneration if the length of employment is between 2 and 8 years;
- 3 months' remuneration if the length of employment is longer than 8 years.

Regardless of the actual value of monthly remuneration, the maximum redundancy pay is limited to an amount equal to 15 national minimum salary as the date of termination (for 2015, this is 15 x PLN 1,750 = PLN 26,250, i.e. approximately EUR 6,250).

Employees may also be entitled to receive enhanced redundancy payments under the terms of their contract or of an applicable collective agreement, although such solutions are rarely encountered in practice.

Are staff required to work during the consultation process?

All in all, the situation of an employee who is in his period of notice consequent to a group redundancy does not differ from that of an employee who has been served with a termination notice



for another reason. For the most part, such employees continue to provide labour, although they are entitled to up to 3 days' extra paid leave for job-hunting purposes. Also, an employee in his termination period may take advantage of any unused leave accumulated from past years as well as from paid leave for the current year (on a pro rata basis); where the employer accords such leave, the employee is legally obligated to accept it.

In redundancies for reasons not attaching to the employee, an employer seeking expedient termination may reduce what would normally be a 3 month period of notice to 1 month, subject to the reservation that the employee must receive remuneration for the remainder of her normal period of notice.

Polish labour law does not directly address the practice of employers exempting employees during their periods of notice from providing labour. Older judicature spoke of a unilateral act in law, subject to the reservation that such a measure must be necessitated by a need to safeguard the interests of the employer, and that legitimate interests of the employer must be observed. More recent authorities, meanwhile, suggest execution of an additional agreement between the parties to the employment relationship.

Can I ask employees to sign a waiver agreement?

Where the employment contract is terminated by way of mutual agreement of the parties, a clause to the effect that the employee is waiving all her claims vis a vis the employer will usually be inserted. In this connection, it should be borne in mind that, under Polish law, an employee may not waive her right to remuneration in whole or in part, or transfer this right onto another person. This is an absolute proscription, which applies to any and all forms of waiver of the right to remuneration, also within the context of a court settlement. Also, Polish law will not recognise the validity of an undertaking by an employee not to seek remuneration in the future.

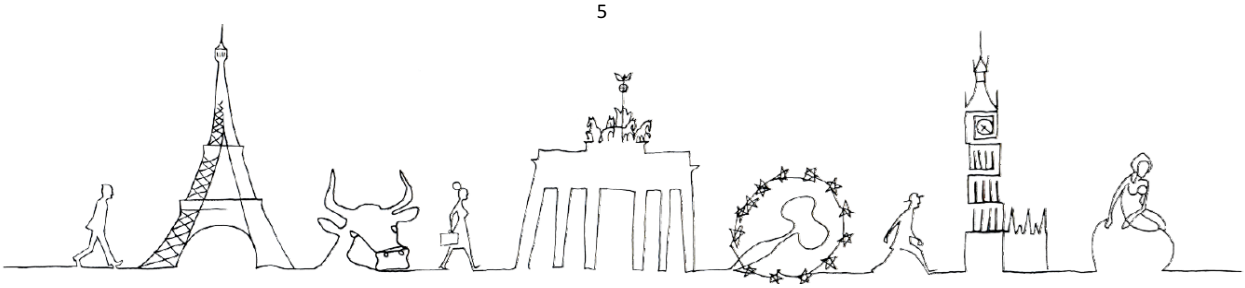
The same basic rule applies to waiver of the employee's right to severance benefits and to cash equivalents for unused leave; these are regarded in the same way as remuneration.

Do I need consent from a public authority?

No. The collective redundancy procedure does require the employer to notify the local labour office, but this duty has an information aspect only – the employer does not have to await the labour office's permission.

Can disgruntled employees bring claims?

Yes. An employee who has been made redundant on grounds not attaching to him benefits from the same remedies as an employee who has been made redundant for other reasons. These include



appeal to the labour courts on the basis that the redundancy was unjustified or was effectuated in breach of labour law rules. Such a claim should be brought by the employee within 7 days following service of the termination notice. If the labour court upholds the employee's claim, it may – depending on the employee's application – deem the termination to have been invalid or, where the contract has already been terminated, enjoin restoration of the employee to her position or payment of damages. In such a case, the right to damages does not hinge upon any actual harm suffered by the employee.

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

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