

March 2016

Collective Redundancies and Reorganizations

PORTUGAL

Summary

In Portugal, collective redundancies are only admissible if due to the closing down of one or more departments of the company or due to a reduction on the workforce caused by market, structural or technological reasons.

Additionally, certain employee thresholds should also be complied with.

When do the provisions apply?

A collective redundancy will be triggered if the following employee threshold numbers are met:

- Companies with one up to 50 employees - at least two employees over a three month period;
- Companies with 51+ employees - at least five employees over a three months period.

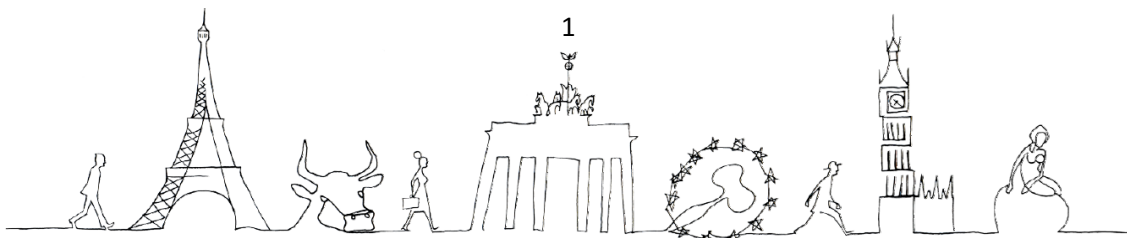
What are the requirements?

After the collective dismissal decision has been taken, the company must notify, in writing, the following entities:

- Works council, trade unions or (in their absence) the employees.
This obligation is triggered when the redundancies have become a probability rather than a mere possibility;
- The Ministry of Employment.

This information phase will then be followed by a negotiation phase with the works council, trade unions or employee representatives. A representative of the Employment Ministry will also take part in the negotiation sessions.

The negotiation meetings should be conducted in order to try to reach an agreement on the effect and extent of the collective dismissal, as well as other alternatives such as temporary



suspension of the employment agreements; reduction of working hours; or requalification or re-grading of employees.

What sanctions apply if the process is not followed?

Non-compliance with collective dismissal provisions is considered as a serious labour offense, punishable with fines between EUR 612 and EUR 9,690.

Additionally, dismissed employees will have the right to appeal to court within 6 months after the date in which their employment agreement terminated, as below mentioned.

Are certain employees protected from dismissal?

Any form of dismissal of pregnant women, puerperal women (women who just gave birth and during a period of 120 days after giving birth) and breastfeeding women needs prior consent from the Portuguese Commission for Labor and Employment Equality (CITE). In the event that the legal opinion issued by the CITE regarding the intended dismissal is negative, such dismissal will only be possible after a favorable court ruling.

Additionally, employees who are members of works council or employee representation bodies also have special protection.

How do I choose which employees to dismiss?

There are no statutory selection criteria - except that the redundant employees must work in the departments or sections which will be closed down or reduced in size.

Therefore, it will be the employer who will have to define the criteria applicable in order to determine which employees will be included in the collective dismissal – these criteria will have to be relevant, objective, plausible and non-discriminatory. Usually, the employer will use criteria such as level of qualification, seniority, productivity, performance and cost each employee.

What is important is that the employer is able to objectively justify why he chose one employee over the other.

What will it cost?

Employees will be entitled to statutory compensation, which will have to be paid ultimately upon expiry of the notice period, otherwise the dismissal may be considered as unlawful.



Such compensation will be based on the employee's last base salary and seniority bonus. The calculation method will depend upon the type of employment agreement and exact seniority of each employee.

Additionally, employees will be entitled to all matured labour credits – e.g. vacations and Christmas allowances and salaries corresponding to any unexpired notice period.

Besides the above mentioned statutory compensation and matured labor credits, no additional costs involved.

Is staff required to work during the consultation?

In theory, employees will have the right to work until the term of the notice period.

Notwithstanding and even though there is no right to garden leaves, this is a common practice in Portugal. In fact, within the ambit of collective dismissal, it is common for the employers to ask employees not to work during the notice period, provided that the company makes a payment in lieu of the entire unexpired notice (this will cover both salary and regular benefits).

However, two notes on this:

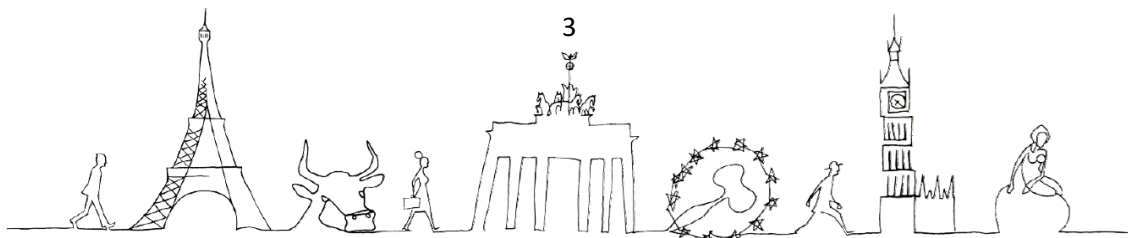
- This is merely a possibility and not a right of the company;
- For all legal purposes (including potential access to unemployment benefits), the employment agreement will only terminate at the end of the notice period.

Can I ask employees to sign a settlement agreement?

It is common practice to enter into settlement agreements with some or all of the employees, either before or after the collective dismissal has been initiated.

Besides the negotiations which have to take place between the employee and the company (the outcome of which is always difficult to predict), this process is quite uncomplicated and simply involves the signing of a document, setting out (i) the date of such agreement, (ii) the amount of the severance pay (which will be agreed between the Parties); and (iii) the date in which the termination of the employment agreement is to be effective.

In any case, it is necessary to coordinate this agreement with the unemployment benefits regime, as it may prevent employees from obtaining it.



Do I need consent from a public authority?

It is not really a consent per se, but rather an information obligation. In fact, the employer must inform the Portuguese Ministry of Employment of the final decision regarding a collective dismissal, as well as provide copy of the following documents: (a) a copy of the minutes of the negotiation meeting(s) (if any); and (b) a list of the employees to be dismissed, including: (i) name; (ii) address; (iii) date of birth; (iv) date of start of employment; (v) social security status; (vi) job description; (vii) professional category; (viii) remuneration; (ix) decision of dismissal; and (x) the date on which such dismissal will take effect.

Can disgruntled employees bring claims?

Dismissed employees have the right to appeal to court within 6 months after the date in which their employment agreement terminated, claiming that there were no grounds for the dismissal and/or the correct procedure has not been followed.

If the court considers the dismissal as unlawful, the employee will be entitled to:

- Compensation for the damages suffered with the unlawful dismissal, including moral damages, which are court-awarded;
- Reinstatement in the company. The employee can, however, choose to receive compensation instead of being reinstated in the company - and if the court finds in favour of the employee, it will generally award whichever remedy the employee has elected. The compensation varies between 15 and 45 days per year of service.

Additionally, the employee will be entitled to receive all the salaries which it ceased to receive since the date the dismissal occurred until a final Court ruling (including potential appeals). However, please note that the employer will be responsible for the payment of 12 months of salary (as of the date on which the case was brought before court) and the remaining period will be paid by the Portuguese Social Security.

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

**For more information regarding employment law in Portugal, please contact:
Patrícia Nunes Borges, FCB Sociedade de Advogados, pnb@fcblegal.com.**

