

January 2016

Collective Redundancies and Reorganisations

Switzerland

Summary

According to Art. 335d of the Swiss Code of Obligations ("CO"), a collective redundancy situation (in Switzerland known as a "mass dismissal") occurs when notices of termination are given by an employer within 30 days for reasons unrelated to the individual employees and which affect:

1. At least 10 employees in enterprises usually employing more than 20 but less than 100 persons;
2. At least 10% of all employees in enterprises usually employing at least 100 but less than 300 persons; or
3. At least 30 employees in enterprises usually employing at least 300 persons.

The provisions governing mass dismissals do not apply on a bankruptcy, where an employer has agreed to assign its assets as part of a composition agreement with its creditors, or where an employer's business operations cease as a result of a court order.

What is the process for making collective redundancies?

An employer planning a mass dismissal must provide all pertinent information to the employees' representative body or, if there is none, to the employees themselves. The employer must inform them in writing of:

1. The reasons for the mass dismissal;
2. The number of employees to be dismissed;
3. The number of persons usually employed; and
4. The time period within which notification of dismissal is to be given.

An employer must also give the representative body the opportunity to make suggestions on how to avoid or limit the number of dismissals, and mitigate their consequences.

The employer must inform the Cantonal Labour Office (as the competent public authority) of every planned mass dismissal, and must send a copy of the notification to the employees' representative body. The notification must include the results of the consultation with the employees' representative body and all pertinent information on the planned mass dismissal. The Labour Office will then seek to resolve any issues arising from the planned mass dismissal. The employees' representative body may submit their comments directly to the Labour Office.



If an employer seeks to carry out a mass dismissal, without having first consulted with the employees' representatives, the notice of termination of the employment relationship is deemed to be "abusive". It will still be valid – the employment relationship will still be terminated at the end of the notice period – but the employer has to pay an indemnity to the dismissed employee(s). The indemnity will be determined by a Judge considering all circumstances. However, it cannot exceed two months' salary.

The date on which the employee's employment ends will depend on the statutory or contractual provisions applicable to each employee. However, the relationship ends at the earliest 30 days after the date on which the mass redundancies were notified to the Labour Office.

How do I choose which employees to dismiss?

Employers are free to select the employees to be dismissed as long as the termination is unrelated to the personal characteristics of the employee or the fact that an employee has been involved in trade union activities. If an employee is dismissed because they belong or do not belong to an employees' association (for example, a trade union), or because they have engaged in union-related activities, their dismissal will be deemed to be abusive (assuming the employer cannot prove that it had a justified motive for the termination).

There are also restrictions on terminating an employment relationship at an "improper time", for example during pregnancy or a period of ill-health absence. These restrictions are outside the scope of this note, but further advice should be sought.

An employee's contract will be terminated at the end of the notice period. A re-assignment after such notice period is possible; there are no further criteria to be considered. Dismissals with the option of varied conditions of employment will, however, still qualify as dismissals under Art. 335d CO, even if they do not result in a termination of the employment relationship.

What will it cost?

The afore-mentioned procedure with the Cantonal Labour Office is free of charge. No additional fees or costs are due.

Employees are entitled to receive salary until the end of the notice period and, in case of a violation of the information and consultation rights, to an indemnity of up to two months' salary.

No severance payments or other benefits are due under Swiss Law (except if severance pay has been agreed within the employment contract). However, a social plan (see below) can mitigate the effect of collective redundancies.

Social Plan

An employer must hold negotiations with the aim of preparing a social plan if (and only if) it:



1. Normally employs at least 250 employees; and
2. Intends to make at least 30 employees redundant within 30 days for reasons unrelated to the individual employees.

The employer will negotiate:

1. (If it is party to a collective employment agreement), with the relevant employee association(s) (i.e. trade unions);
2. With the organisation representing the employees (i.e. the representative body); or
3. Directly with the employees, if there is no organisation representing them.

Are staff required to work during the consultation process?

Employees are obliged to personally perform their duties during the consultation and notice period, unless the employer has released them. However, even if an employee has been placed on garden leave, the employer must pay the contractual salary until the end of the employment relationship. Employees have no right to be released from their duties.

Can I ask employees to sign a waiver agreement?

Settlement agreements are possible. However, the employee may not waive any claims resulting from mandatory provisions of law or from mandatory provisions of a collective employment agreement during the employment relationship or for one month thereafter.

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

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