

January 2016

Collective Redundancies and Reorganisations

Turkey

Summary

Under Turkish Employment Legislation, collective redundancy conditions differ based on the number of employees working at a workplace. Accordingly, where the employment agreements of at least:

- a) 10 employees with regard to workplaces employing between 20 to 100 employees;
- b) at least ten per cent of employees with regard to workplaces employing between 101 to 300 employees;
- c) at least 30 employees with regard to workplaces employing between 301 and more employees;

are to be terminated within one month, on the same or different dates, this will constitute a collective redundancy.

The immediate termination of an employee's employment agreement by the employer, and the termination by an employee for personal reasons, do not count towards collective redundancies.

What are the requirements?

Employers may take collective redundancy decisions based on economic, technological, structural and similar operational and business related reasons. Internal reasons with regard to collective redundancy could be downsizing the business, the need to use new technologies etc. External reasons could be a national economic crisis, decrease in sales opportunities or a lack of energy sources and raw materials etc.

The employer's reasons should be proved with written evidence. For example, in the case of a collective redundancy for reasons of economic shrinkage or business downsizing, the employer should be able to demonstrate after reviewing both its current and previous financial turnover, that there is indeed an economic shrinkage and business downsizing.

Collective redundancies for reasons of economic, technological, structural and similar operational and business related reasons should be notified in writing at least 30 days in advance to the



employer's union representative and the Provincial Directorate of Employment and Labour Organization. The notice must contain information regarding the reasons for the collective redundancies, the number of affected employees and employee groups and the timeframe when the collective redundancy process is going to take place.

What sanctions apply if the process is not followed?

As of 01.01.2015, a TL 555 (c.€195) administrative fee per employee is imposed on employers who have not duly complied with the abovementioned notification obligations and procedures specified under the legislation regarding collective redundancies.

The Supreme Court has ruled that termination shall not be effective for employees in the event that no notification has been delivered to the Provincial Directorate of Employment and Labour Organization. In order to establish this, the relevant court should render a declaratory judgment regarding the invalidity of termination.

Are certain employees protected from dismissal?

Under Turkish Law, there is no restriction with regard to collective redundancies; no consideration is given to the employee's specific situation. However, in workplaces where 50 or more employees are employed, it is the employer's legal obligation to employ disabled and formerly convicted employees and an employer not complying with this obligation will be given an administrative fine.

How do I choose which employees to dismiss?

In practice, employers usually dismiss newer employees, are less experienced. If there is no provision regarding this issue under the collective employment agreement, the employer, based on its own evaluation, decides whom to dismiss. Factors such as age, family situation and experience are taken into account. It can be said that young employees, inexperienced employees, single employees and married employees without children are primarily the preferred groups when it comes to collective redundancies.

Unfair dismissal

Collective redundancies should be based upon fair, legitimate and true reasons.

What will it cost?

With regard to collective redundancies, severance pay differs according to the number of dismissed employees and seniority and salary of such employees. Thus, questions such as how much would collective redundancies cost and how much would the employer have to pay can only be answered after having information regarding this criteria.



Are members of staff required to work during the consultation process?

Collective redundancy procedure is carried out with notice in accordance with the Article 17 of the Labour Law. Therefore, when delivering the relevant notification to employees, employees are asked to continue to work for 2 to 8 weeks depending on their length of service. Otherwise, if an employer terminates an employee's agreement without considering such periods, such an employer is obligated to pay not only severance pay but also notice pay.

Do I need consent from a public authority?

An employer must give notice of collective redundancies to the relevant authorities. After such notice, the union representative and employer hold a meeting to discuss whether collective redundancies can be avoided, whether the number of employees to be dismissed can be reduced or whether the negative effects of such collective redundancy on employees can be minimized. At the end, minutes of the meeting should be drafted, evidencing that the meeting was held. If a workplace is to shut down entirely and permanently terminate its operation, the employer must give notice to the Provincial Directorate of Employment and Labour Organization and announce it at the workplace. No consent or permission needs to be obtained from governmental authorities on this matter.

Can disgruntled employees bring claims?

Employees cannot bring any claims against an employer if they are paid severance pay as a result of a collective redundancy and also paid any other sums due (if any). Even if a claim on this matter is brought against the employer before a court, it should not be successful.

If the reason for collective redundancy is legitimate, in other words, if there really is an economic shrinkage or business downsizing, the employee should not be able to file a reemployment lawsuit, since the employment agreement has been terminated with a just/valid reason. Even if a claim on this matter is brought against the employer before a court, it should not be successful.

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

**For more information regarding employment law in Turkey, please contact:
Cavit Yöner, Kasaroğlu Law Office, at cavit@kasaroglu.av.tr.**

