Collective dismissals in Spain

A high level outline of the obligations that apply in relation to a collective dismissal procedure in Spain.

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Definition of a collective dismissal

A collective dismissal is the dismissal within a period of 90 days of:

- at least 10 employees, in companies with fewer than 100 employees
- 10% of the workforce, in companies with 100 to 299 employees, or
- 30 employees, in companies with 300 or more employees.

If the entire workforce is to be dismissed this will also fall within the definition of a collective dismissal provided that more than five employees are affected and there is a complete cessation of business activity.

In order for collective dismissals to be valid, it is not necessary to prove that it is impossible to continue the business if the dismissals are not carried out. It is sufficient that: (i) there are income or sales’ losses, present or foreseen, which show a persistent decrease during three consecutive quarters; or, (ii) that taking technical or organisational measures or and measures related to production will enable the company to overcome a difficult situation or will help to improve its results.

Procedure

The procedure to be followed is:

- The employer notifies the legal representatives and labour authority of the start of the consultation period and provides certain documents which justify the need to carry out the collective dismissals.
- The labour authority will notify the Social Security and the labour inspectorate of the situation, which will issue a non-binding report in order to determine whether or not the grounds alleged by the employer take place.
- Negotiation period must last for at least 30 calendar days (15 days if the company has fewer than 50 workers) or if earlier: (i) an agreement is reached; (ii) the parties determine that an agreement will not be possible.
- During the negotiation period, the parties must negotiate “in good faith” and with the intention of reaching agreement. Failure to do so can imply dismissals being declared null and void.
- Once the consultation period is over, the employer must communicate the decision taken (with or without
agreement) to the legal representatives and the labour authority and start implementing dismissals even if no agreement is reached between the parties.

- The employer must offer the individuals the severance payment agreed during the consultation or, if no agreement is reached, 20 days’ salary for each year of service (up to a maximum of 12 months).
- If the collective dismissal affects more than 50 employees, the company must offer an outplacement plan, which will be monitored by the labour authorities.
- Employees can appeal the employer’s decision before the Labour Courts. If the employees make such an appeal, Labour Courts can make a declaration that the collective dismissals are null and void, unfair or fair, with different consequences associated.

**Obligations to inform and consult works councils**

As mentioned in order to carry out collective dismissals, an employer must notify the competent labour authority and the employee representative of the start of a collective dismissal procedure and provide certain documentation with the documentation. An employer must consult with employee representatives (workers’ council) or trade unions representatives.

If the employees are not legally represented, they may participate in the collective dismissal procedure themselves by electing three individuals to represent them in the negotiation period with the employer and before the competent labour authority.

If there is a European Works Council (EWC), there may be a requirement to inform and consult the EWC if the collective dismissals affect employees in more than one jurisdiction.

**Selection criteria**

Representatives will be given priority in relation to any jobs which remain in place. Other than this, it is for the employer to decide on the selection criteria. These should, however, be as objective as possible.

**Redundancy costs**

Redundancies have various costs associated with them which may include some or all of the following:

- Statutory redundancy payment plus 15 days’ notice salary.
- Especial agreement with the Social Security System (whereby an specific contribution to the Social Security is made) in relation to affected employees over the age of 55.
- Potential additional payments for employees over the age of 50.
- Outplacement services (companies with more than 50 employees affected by the collective dismissal).
- Legal costs.

Further information on collective dismissals in Spain is available from our International Employment Issues microsite here.

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