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Spain: Public authorities information and consultation on dismissals

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Spain

Phase:

Anticipation

Type:

Public authorities information and consultation on dismissals

Last modified: 24 October, 2017

Native name:

Estatuto de los Trabajadores (ET); Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral; Real-Decreto ley 11/2013, de 2 de Agosto, para la protección de los trabajadores a tiempo parcial y otras medidas urgentes en el orden económico y social

English name:

Statute of Workers' Rights; Law 3/2012 of 6 July on urgent measures to reform the labour market; Royal Decree law 11/2013 of 2 August for the protection of part-time workers and other measures in the economic and social field

Article

Art. 51 Statute of Workers' Rights; Art. 18.3 Law 3/2012; Art. 4 Royal-Decree 11/2013

Description

Collective dismissal in Spain was under administrative authorisation until February 2012. In February 2012, a labour legislation reform eliminated the requirement for administrative authorisation. Other requirements related to information and consultation of employees' representatives are still valid. In the case of individual dismissals, procedures related to information and consultation are not required.

Collective dismissals apply if redundancies affect, within a period of 90 days, at least 10 employees in companies employing fewer than 100 employees; 10% of the employees in companies employing between 100 and 299 employees; or 30 employees in companies employing more than 299 employees. In addition, the company can implement a collective dismissal if it affects a minimum of more than five employees if the entire workforce is affected in case business shuts down completely.

The employers must supply the labour authorities and the employees' representative the following information in writing: a statement for the reasons for redundancies, individual personal and job information on candidates for redundancy; the names of all other employees; financial statements such as balance sheets, with a separate report on the finances, production, sales and organisation; an auditor's assessment and a report by the works council or personnel delegates.

Once the information is provided, a consultation period is opened which will be no longer than 30 days, or 15 in case of companies with fewer than 50 employees. During this period, employers and workers' representatives (i.e. workers' delegates and workers' committees) discuss the reasons motivating the process and the possibility of avoiding or reducing its effects, as well as the necessary measures to attenuate its consequences for workers. For example, the parties can negotiate measures such as the use of outplacement companies, training, or professional recycling for the improvement of the workers employability, or other measures to make the undertaking viable.

Consultation has to take place with a single negotiating committee. If there are several establishments, the negotiating committee will be limited to the job centres affected by the collective dismissal. The negotiating committee will be made up by a maximum of 13 workers. The negotiating committee must be established before the company notifies the opening of the consultation process.

The labour authority monitors the effectiveness of the process and forwards warnings and recommendations to the parties. These are submitted in writing to both parties. Employees' representatives can provide the labour authority with their observations. In line with these, the labour authority forwards warnings or recommendations to the parties. The labour authority (ministry of employment at national level/employment section in the regional government at regional level) has to communicate the collective dismissal to the public employment service and request a report about the development of the consultation process. The report must be submitted 15 days after the communication by the employer at the end of the consultation period.

If there is an agreement between the employer and the employees' representatives, the collective dismissal is applied. If there is no agreement, the employer has the final decision. Thus, the employer is to communicate to the labour authority and the employees' representatives its final decision and the conditions to be applied.

Comments

According to the OECD (2013), the elimination of the administrative authorisation increased uncertainty about the final cost for employers of dismissal decisions. Even if the litigation rate as regards collective redundancies remained relatively low (below 5%), a large share of concluded procedures concerning collective dismissals resulted in court rulings against the employer. And, in most of these cases, the judges ruled that the dismissal procedure was null and void and ordered the reinstatement of the affected workers with the obligation to pay them for the period they were not working. This was a new situation in the Spanish labour market. Moreover, in most cases, the court decisions against employers were based on the non-respect of the negotiation procedure rather than on the dismissal causes. These shortcomings of the new regulations of collective dismissals were partly addressed by the Royal Decree law 11/2013 which defined in a more precise way the requirements of the consultation procedure and the cases in which the dismissal can be declared void.

Cost covered by

Not applicable

Involved actors other than national government

Public employment service
Regional/local government
Trade union
Works council

Thresholds

Company size by number of employees:

6

Number of affected employees:

6

Sources

-  DG Employment, Social Affairs and Equal Opportunities/Héra (2011), Selected companies' legal obligations regarding restructuring
-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  Watson Wyatt (2006), Employment Terms and Conditions Report Europe, Volume I, Brussels, Belgium
-  Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, European Commission, Brussels
-  Eurofound (2010), EMCC legal framework of restructuring, Dublin
-  Ministry of Employment (2016), Labour Guide, Madrid
-  Statute of Workers' Rights
-  Royal Decree 801/2011
-  Law 3/2012
-  Royal Decree 11/2013
-  OECD (2013), The 2012 labour market reform in Spain: a preliminary assessment, OECD Publishing, Paris

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