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Spain: Employers obligation to support redundant employees

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Spain

Phase:

Management

Type:

Employers obligation to support redundant employees

Last modified: 24 October, 2017

Native name:

Real Decreto 801/2011, por el que se aprueba el Reglamento de los procedimientos de regulación de empleo y de actuación administrativa en materia de traslados colectivos; Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral

English name:

Royal Decree 801/2011 that enacts regulation of the procedures of employment regulation and administrative measures in cases of collective relocation; Law 3/2012 of 6 July on urgent measures to reform the labour market

Article

Article 9 and 18 of Royal Decree 801/2011; Article 18 of Law 3/2012

Description

During the consultation period of a collective dismissal in general (within 90 days, more than 5 employees made redundant if the whole workforce is affected; at least 10 employees in companies with fewer than 100 employees; 10% of the employees in companies between 100 and 299 employees; and 30 employees in companies with more than 299 employees), employers and workers' representatives discuss not only the reasons for the dismissal, but also the possibility of avoiding or reducing its effects, as well as the necessary measures to attenuate its consequences for workers. This does not apply in case of individual dismissals.

For example, the negotiators can agree on measures such as the use of outplacement companies, training (including training for the improvement of the workers' employability), or other measures to make possible the viability of the undertaking.

In undertakings with 50 or more employees, the employer must provide a social plan to the public authorities and workers' representatives. The social plan can include the following measures:

- measures intended to avoid or reduce the effects of restructuring – for instance, internal redeployment, functional or geographical mobility, substantial modifications of contractual conditions, training or retraining measures;
- promotion of self-employment or employment in the social economy;
- financial compensations for geographical mobility;
- economic, technical, organisational and other types of measures intended to make the continuation of the undertaking and its activity possible.

Companies have to carry out a special training and redeployment plan of at least 6 months implemented by means of an authorised outplacement company, if the collective dismissal affects over 50 employees.

Comments

It is worth noting that only companies employing 50 workers or more are forced to implement a social plan aiming to support dismissed workers.

In practice, the use of early retirement schemes as social plan measure results in dismissals of employees near retirement age. This will not be discriminatory if continuity of earnings until retirement age is guaranteed, and justified that if these were not dismissed, other workers would be affected and the company could not guarantee compensation for them. In this case, these employees would be in worse situation in terms of entering the labour market.

Law 3/2012 extended external flexibility by specifying more precisely the objective reasons under which an employer can undertake a collective redundancy. In exchange, the law forced the companies to carry out a special training and relocation plan for the workers dismissed if the collective dismissal affects over 50 workers.

Cost covered by

Employer

Involved actors other than national government

Public employment service

Trade union

Works council

Other

Involvement others

Authorised outplacement companies

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
-  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
-  Eurofound (2010), EMCC support of restructuring, Dublin
-  OECD (2013), The 2012 labour market reform in Spain: a preliminary assessment, OECD Publishing, Paris
-  Royal Decree 801/2011
-  Law 3/2012
-  OECD EPL Database

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