



EMCC

European Monitoring Centre on Change

Spain: Effects of non-compliance with dismissal regulations

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Spain

Phase:

Management

Type:

Effects of non-compliance with dismissal regulations

Last modified: 24 October, 2017

Native name:

Estatuto de los Trabajadores (ET); Ley 36/2011, de 10 de octubre, reguladora de la jurisdicción social; Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral; Real Decreto 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 36/2011 of 10 October that regulates the social jurisdiction; 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

Article 51 Statute of Workers' Rights; Article 122 Law 36/2011; Article 18 Article Law 3/2012; Article 11 Royal Decree 11/2013

Description

In the event of non-compliance with legislation and the negotiation procedure in case of collective dismissals, worker representatives (workers' delegates, working committees or trade unions) can challenge the procedure and take action against the employer in the Social Court. In such cases, the judge can rule that the dismissal procedure is null and void. Furthermore, access to the Compensation Fund (Fondo de Garantía Salarial) can be denied.

Under Spanish law, a dismissal is considered to be 'collective' where the termination of employment contracts are based on economic, organisational, technical or productive grounds. To be considered 'collective', such terminations must concern more than 5 employees if the whole workforce is affected, at least 10 employees in companies smaller than 100 employees, 10% of the employees in companies between 100 and 299 employees, or at least 30 employees in companies with more than 299 employees.

There are no criminal sanctions if the employer does not adhere to the procedure set by the law. The action that can be taken by the Social Court (Tribunal de lo Social) is to rule that the dismissal procedure is null and void. In those cases workers have to be reinstated in the company.

In the event of unfair dismissal, as declared by the court, the employer can choose compensation in lieu of reinstatement. The compensation amounts to 33 days' pay for each year of service up to a maximum of 24 months' pay. In case of reinstatement, the employer is to reimburse the employee counting from the day of dismissal until the day of the court's decision or until the employee finds another job, should this happen before the court makes a ruling on the matter.

Comments

According to the OECD (2013), the elimination of administrative authorisation in collective dismissals by Law 3/2012 increased the 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. 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 backpay. This was a new situation in the Spanish labour market. Moreover, in most cases, the court decisions against employers was based on non-compliance with the negotiation procedure rather than 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

Employer

Involved actors other than national government

Trade union
Works council
Other

Involvement others

Court

Thresholds










Company size by number of employees:

6

Number of affected employees:

6

Sources

-  Ius Laboris (2009), Collective Redundancies Guide, Brussels
-  Eurofound (2010), [EMCC legal framework of restructuring](#), Dublin
-  Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate restructuring, European Commission, Brussels
-  [Statute of Workers' Rights](#)
-  [Law 36/2011](#)
-  [Law 3/2012](#)
-  [Royal Decree 11/2013](#)
-  OECD (2013), The 2012 labour market reform in Spain: a preliminary assessment, OECD Publishing, Paris
-  ILO EPLex - Spain

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