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Luxembourg: Selection of employees for (collective) dismissals

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Luxembourg

Phase:

Management

Type:

Selection of employees for (collective) dismissals

Last modified: 22 January, 2021

Native name: Code du travail
English name: Labour Code

Article

L. 166-3, L. 423-1

Description

The Labour Code does not provide any criteria regarding the selection of employees as part of a collective dismissal. However, in companies with a joint committee (*comité mixte*), the employer must reach an agreement with staff representatives with regards to the selection of employees to be dismissed.

In the framework of the law of 23 July 2015 reforming employee representation in companies ([Loi du 23 juillet 2015 portant réforme du dialogue social à l'intérieur des entreprises](#)) (EurWork, [Luxembourg: Reform of employee representation in companies](#), 15 December 2015) it should be noted that joint committees will cease to exist after work place elections which take place after 1 January 2016 (and at the latest after the work place election scheduled of 2019). As from these elections, the tasks and duties assigned to joint committees will be transferred to the staff delegations in companies which had at least 150 staff during the 12 months preceding the first day of the posting of the announcement of elections. Until these elections, the joint committees currently in place will continue to carry out their tasks.

Information on the number and categories of employees concerned

In cases of dismissal of at least 7 employees within 30 days or at least 15 employees within 90 days, the employer has to inform and consult the employees' representatives including the staff committee (*délégation du personnel*) or the joint committee (*comité mixte*) on its redundancy project. Employers must provide written information including the reasons for the projected collective redundancies, the number and categories of employees concerned, the criteria selected to lay off employees and any compensation packages proposed. Then, the employer must negotiate a social plan with the employees' representatives and representative unions if the employer is bound to a collective agreement. In this framework, social partners may agree on the criteria of selection.

Co-determination if a joint committee exists

In companies with a joint committee (in organisations with at least 150 employees), the employer must reach an agreement regarding the selection of employees with staff representatives. According to the Labour Code, the joint committee exerts an executive power whereby it can co-determine or provide modifications to the criteria of selection for hiring, promotion, transfer, dismissal and, when applicable, the priority criteria for admission to early retirement of employees. With a view to fulfil this regulation, a consultation process has to take place between the employer and employees' representatives in order to establish the selection criteria.

Comments

Case law argues that the employer is responsible for his/her business and thus free to decide on restructuring measures leading to job cuts, as long as these actions are not a result of a culpably thoughtless manner and he/she is not using restructuring merely as a pretext for firing staff. Consequently, the employer is not required to justify why he/she has chosen to dismiss an employee rather than another. However, although he/she is free to take this decision, any selection of employees must not be discriminatory.

Cost covered by

Not applicable

Involved actors other than national government

Public employment service
Works council

Thresholds


Company size by number of employees:

7

Number of affected employees:

7

Sources

 [Labour Code](#)

 [Loi du 23 juillet 2015 portant réforme du dialogue social à l'intérieur des entreprises](#)

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