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European Monitoring Centre on Change

Spain: Selection of employees for (collective) dismissals

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Spain

Phase:

Management

Type:

Selection of employees for (collective) dismissals

Last modified: 24 October, 2017

Native name: Estatuto de los Trabajadores (ET)
English name: Statute of Workers' Rights

Article

51

Description

Employee representatives (trade union section, works council or workers' delegate) must be the 'last out' in collective dismissals (where, within a period of 90 days, more than 5 employees are dismissed if dismissals affect the entire workforce; 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 300 or more employees). Senior executives cannot be dismissed as part of a collective redundancy if they are hired on a so-called high management contract (contrato de alta dirección).

Factors such as an employee's age, length of service, personal circumstances and other criteria are taken into account when deciding which employees are going to be made redundant. However, these factors are not explicitly mentioned in the law. Article 51.2 forces the employer to detail in the notification of collective dismissals the criteria taken into consideration to select the workers to be dismissed. Criteria have to be objective and cannot hide any discrimination.

Comments

The regulation aims to ensure effective exercise of employees' representatives rights by establishing that they will be the 'last out' in collective redundancies. As a result of this provision, regulation expects that employees' representatives will have more freedom to protect worker's rights in case of dismissals. This provision has not been questioned or discussed.

Cost covered by

Not applicable

Involved actors other than national government

- Trade union
- Works council

Thresholds

Company size by number of employees:
6
Number of affected employees:
6

Sources

- Ius Laboris (2011), Individual dismissals across Europe, Brussels
- Watson Wyatt (2006), Employment Terms and Conditions Report Europe, Vol. 1, Brussels, Belgium
- Alpha Consulting (2003), Anticipating and Managing Change - A dynamic approach to the social aspects of corporate

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