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France: Selection of employees for (collective) dismissals

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France

Phase:

Management

Type:

Selection of employees for (collective) dismissals

Last modified: 10 October, 2019

Native name:

Code du travail

English name:

Labour code

Article

L.1233-5, L. 1233-6, L.1233-7, L.1233-17, R.1233-1, D. 1233-2, L. 1132-1

Description

In case of individual or collective dismissals for economic reasons, the employer needs to consider certain criteria for the selection of employees to be made redundant. If applicable, the employer applies the collective agreement's criteria for the implementation of an Employment Security Plan (*Plan de sauvegarde de l'emploi*).

When no collective agreement applies, the employer has the responsibility to define selection criteria, which need to include the following elements as specified by article L. 1233-5:

- family expenses, especially with respect to single parents;
- seniority in the company;
- professional qualities;
- any situation that might make it difficult to find work (for instance, on account of age or disability).

The employer may give priority to one criterion as long as all the above are considered and can add other criteria to the list. However, article 1132-1 lays out a general principle of non-discrimination in employment relationships: it follows that the employer cannot use the employee's origin, surname, place of residence, ethnicity, physical appearance, gender, sexual orientation, marital status, pregnancy, age, health status, disability, trade union membership, religious and political beliefs as selection criteria for dismissal.

According to article 1233-5, employers have a high degree of flexibility with respect to the application of selection criteria to the business units. Regardless of the workforce size and the dismissal figures, each employer (a single company, including its different business units, where appropriate) is entitled to set the scope of application of selection criteria by collective agreements. In this framework, it is possible to apply the selection criteria to a narrower scope than the entire company. In case no collective agreement is concluded in this respect, it is up to the employer to define the scope of application. In this case, the law limits the scope to at least the individual employment zone (*zones d'emploi*), in which one or more establishments of the company are located and affected by dismissal. It follows that criteria may vary between employment zones, which are set by the National Institute of Statistics and Economic Studies (INSEE) and the statistics services of the Ministry of Labour. According to the database managed by INSEE, an employment area is a geographic area in which the majority of the general workforce lives and works, and in which establishments can find the bulk of the workforce needed to fill the jobs offered.

Within 10 days after the termination of the contract, the redundant employee may ask the employer which criteria were applied in the dismissal. The employee needs to send a written letter delivered personally against discharge or by registered letter with acknowledgment of receipt (LRAR). The employer must reply to the employee, under the same modalities, within 10 days of the delivery of the letter.

Non-compliance with the selection criteria might lead to the employee receiving compensation.

Comments

After the 2015 reform, the labour code was again amended in 2017 to increase the flexibility provided to employers to apply selection criteria. With the 2015 reform, only companies with at least 50 employees and 10 redundant people over a 30-days period could limit the scope of selection criteria through collective agreement. With the 2017 reform, all companies benefit from this provision regardless of their workforce size and dismissal figures.

Case law of the Supreme Court (Cour de cassation) – for collective dismissals of fewer than 10 employees – and the Council of State (Conseil d'Etat) – for collective dismissals of 10 employees and over – strictly controls that all the criteria are taken in consideration. An employer may

not directly or indirectly exclude any of these criteria.

Cost covered by

Employer








Involved actors other than national government

National government only

Thresholds

No, applicable in all circumstances

Sources

-  [Labour code](#)
-  [Governmental Website on the labour law legislation "Comment sont choisis les salariés touchés par un licenciement économique ?"](#)
-  [Ministry of Labour website 'L'ordre des licenciements'](#)
-  [Décret n° 2015-1637 du 10 décembre 2015 relatif au périmètre d'application des critères d'ordre des licenciements pour les entreprises soumises à l'obligation d'établir un plan de sauvegarde de l'emploi](#)
-  [INSEE, Base des zones d'emploi](#)
-  [EC flash report on labour law, September 2017](#)
-  [Grangé, J., \(2019\), Employment and employee benefits in France: overview. Thomson Reuters.](#)

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