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Ireland: Public authorities information and consultation on dismissals

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Ireland

Phase:

Anticipation

Type:

Public authorities information and consultation on dismissals

Last modified: 10 December, 2021

Native name:

Protection of employment act, 1977 (as amended by S.I. No. 370/1996 Protection of employment order 1996); The companies (rescue process for small and micro companies) bill 2021

English name:

Protection of employment act, 1977 (as amended by S.I. No. 370/1996 Protection of employment order 1996); The companies (rescue process for small and micro companies) bill 2021

Article

9-14 of 1977 Act; s.9 of the 2021 Act

Description

The Protection of employment act makes it mandatory on employers proposing a collective redundancy to engage in an information and consultation process with employees' representatives and to notify the Minister for Jobs, Enterprise and Innovation of the proposed collective redundancy at the earliest opportunity and in any event at least 30 days before the first dismissal takes effect.

Collective redundancy, for the purpose of the act, is defined as at least 5 redundancies in an establishment employing 21-49 employees; at least 10 redundancies in an establishment employing 50-99 employees; at least 10% of employees made redundant in an establishment employing 100-299 employees; and at least 30 redundancies in an establishment that employs 300 or more people.

The following information has to be provided: name and address of the employer, indicating whether he or she is a sole trader, a partnership or a company; the address of the establishment where the collective redundancy is proposed; the total number of persons normally employed at the establishment; the number and description or categories of employees proposed to be made redundant; the period during which the collective redundancies are proposed to be effected; the reasons for the proposed redundancies; the names and addresses of the employees' representatives consulted about the proposed redundancies; the date on which those consultations commenced and the progress achieved to date of notification.

The minister must also be supplied with a copy of all the information given to employee representatives, and all information supplied to the minister has to be supplied to employee representatives.

The minister cannot prevent the redundancies, but may require employers to consult various authorities in order to seek solutions to problems caused by the redundancies, or attempt to reduce the number of planned redundancies.

In some redundancy situations, likely to have a major impact in a region, special interagency task forces designed to fast track the design and provision of services in response to significant impending job losses are in place. IDA Ireland is often consulted during the 30-day period at companies that come under its remit and which are affected by redundancies.

No redundancies can take place during the 30-day consultation period.

If an employer fails to comply with the notification process, they are guilty of an offence and can be fined up to €5,000. Where redundancies have taken effect during the 30-day period, the employer can face a fine of up to €250,000. However, if the company is in formal wind-up/liquidation, the penalty for carrying out redundancies before 30 days does not apply.

The Companies (Rescue Process for Small and Micro Companies) Act 2021 provides new rights to employees as creditors in liquidation scenarios. The main change is that it is now a right of creditors to form an inspection committee, on which there must be at least one

employee creditor. There is also recourse to the Workplace Relations Commission and Labour Court built into new provisions, in the event of a dispute during the liquidation consultation phase. This inspection committee facilitates a direct employee voice in the liquidation scenario; the chosen employee creditor would most likely be chosen through a trade union or works council process.

Comments

The protections under section 12 of the 1977 Act came under scrutiny following the controversial sudden closure of the Clerys store in Dublin, June 2015. Though section 12 of the Act requires an employer to consult with employee representatives, the penalty for breaching this obligation has been criticised as ineffectual. The Court of Justice of the EU in its *Claes* judgement (C-235/10), confirmed that obligations under Articles 2 and 3 of the collective redundancy Directive 98/59/EC apply 'to a termination of the activities of an employing establishment as a result of a judicial decision ordering its dissolution and winding up on grounds of insolvency, even though, in the event of such a termination, national legislation provides for the termination of employment contracts with immediate effect.' This would suggest Irish law is currently at odds with European authority in this regard.

In June 2021, the government confirmed its legislative plans to remedy the situation around the current exemption to the 30-day consultation period for collective redundancies in insolvency scenarios. The Department of Enterprise states that this exemption 'will be removed to ensure that all collective redundancies will be subject to the 30-day notification period.' Where a redundancy arises due to company insolvency, it has been decided that an employee may be placed on temporary lay-off by the liquidator for the duration of the 30-day notification period (with the employment termination date to coincide with the expiry of the statutory 30-day period). To ensure compliance, the department has decided that the redress provision in section 41 of the Workplace relations commission act 'will apply to a contravention of section 14 of the Protection of employment act 1977 (which provides for the statutory 30-day period of notification to employees).'

The first phase of new legislative rights for employees during liquidation scenarios - the selection of an employee representative in the liquidation inspection committee - is just the start of a series of new measures intended to improve the situation for employees in company insolvency scenarios. More legislation is planned in 2022.

Cost covered by

Not applicable

Involved actors other than national government

Trade union
Works council

Thresholds

Company size by number of employees:

21

Number of affected employees:

5

Sources

- [Protection of employment act, 1977](#)
- [Protection of employees \(collective redundancies\) bill 2017](#)
- [Duffy-Cahill report](#)
- ['New plans for collective redundancy 'well received' by social partners', IRN 22/2021](#)
- [Broughton, A. \(2009\), Anticipating and managing restructuring Ireland](#)
- [DG Employment, Social Affairs and Equal Opportunities/Héra \(2011\), Selected companies' legal obligations regarding restructuring](#)
- [Ius Laboris \(2016\), Individual dismissals across Europe, Brussels](#)
- [Purdy, A. \(2011\), Termination of employment: A practical guide for employers \(2nd ed.\), Bloomsbury Professional](#)
- [EMCC legal framework of restructuring](#)
- [Workplacereactions.ie - Failure to notify a collective dismissal](#)

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Contact us

Eurofound, Wyattville Road, Loughlinstown, Co. Dublin, D18 KP65, Ireland

Phone: (00) 353 1 2043100

E-Mail: information@eurofound.europa.eu

Press: media@eurofound.europa.eu



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